Toward a Better Understanding of Human Rights

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In all countries of the world, human rights are formally recognized in one way or another, either as in the People's Republic of China by a separate article in the Constitution, or in Germany as fundamental rights of the Constitution and/or by ratification of international treaties. At the same time, human rights are controversial in their general understanding and in many specific questions. They are often disregarded or abused as an instrument of power politics. And the institutions of control, enforcement and the legal protection could be improved in many ways. On the one hand, you can speak of a success story of human rights since the World War II, and on the other hand, specific design, effective protection and enforcement are only realized in approaches, so some speak of an impending failure of the project of human rights. There are many reasons for this ambivalent assessment.

An important reason seems to be that even the ideas about what human rights are, are unclear and controversial. Many see the human rights unhistorical, as if they were eternal ideas, and adversely affect human rights with too high expectations. Others see in them only moral rights, or reduce them to mere political instruments. Finally, some doubt whether the human rights because they are historically developed in Western cultures, can be truly universal rights. Therefore, a conceptual and argumentative clarification should be attempted from a philosophical perspective. This will be the aim of the following three papers. The first two papers date back to lectures on human rights, Georg Lohmann hold at Fudan University in April 2014. The third paper was annexed by courtesy of Regina Kreide, who is an important scholar on the subject of human rights in Germany, but also internationally.

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In his introductory lecture, Lohmann shows that human rights are historical projects. They are legal inventions and institutional structures and respond to historical injustices and serious atrocities suffered by people, or which threatening them. He therefore distinguishes, both historically and systematically, different *conceptions* (national, international and transnational) of human rights from a *concept* of human rights. Included in *national* conceptions are the human rights declarations of North America (1776) and France (1789). The starting event of the *international* conception is the Universal Declaration of Human Rights (UDHR) by the United Nations (UN) after the World War II in 1948. And it can be argued that a *transnational* conception of human rights that better fits the globalized world and the already global developments in international law and governance is needed.

As a general concept human rights are *politically* motivated and *politically* constituted *juridical* rights, which raise *morally* justifiable claims. They are available to every person as an individual independent of specific acquisition activities or social relationships and can be claimed by all people in the same way; to that extent, they are *universal*, *egalitarian*, *categorical* and *individual* rights, which protect *fundamental* interest of every human being or her or his human dignity. Referring to this general concept of human rights, he explains why human rights are not a comprehensive theory of the good and thus illustrates the limits and also the original strength of human rights. We should not overestimate human rights, but we should also be aware that a sober understanding of human rights is philosophically reasonable, legally possible and politically of great importance.

The importance of this understanding of human rights can be seen in the discussion of a problem that accompanied the discourse on human rights from the beginning: the tensions and oppositions between the individual and community. In his second paper, Lohmann first recalls how in the UDHR (1948) and in the major human rights treaties, the rights and obligations of individuals are regulated toward communities. He then investigates whether the so-called third generation rights, in which “collectives” are bearer of human rights, are really genuine human rights. Against communitarian arguments for the primacy of community-related duties, one can stress an expansion of a liberal concept of human rights by the inclusion of justice demands and social human rights. And in the end, he uses the example of the protection of minorities to show that special community needs can be protected and promoted through individual human rights *and national* collective rights.

In the third paper, Regina Kreide asks, in what sense human rights are political rights. She argues that the current skeptical mood concerning human rights is also caused by the prevailing “traditional” notions of human rights. Human rights either are seen in a morally exaggerated way as “trump cards” in political negotiations, or are pruned back to a purely juridical level, absorbed into legal instances that accord them at most the rank of constitutional rights. In contrast to this, she defends a political conception of human rights that overcomes the problems besetting both conceptions, but without having to sacrifice their critical, normative content or a realistic role for human rights in international politics.

The criticism of politics by human rights is as much a component of a political conception of human rights as the critique of human rights themselves. In struggles for and around human rights, they unavoidably shed their historical, cultural and

political “neutrality,” though far from detracting from their emancipatory idea, this lends it even greater force. In an attempt to explain these assertions in greater detail, she uses a “traditional” notion of human rights as a backdrop to outline what she understands by a political conception of human rights as regards justification and content, and then goes on to defend them against a range of critics and explains briefly what function such a conception of human rights could perform in international relations.

Georg Lohmann worked as Professor for Practical Philosophy at the Institute of Philosophy at Otto-von-Guericke University, Magdeburg, since 1996. He is still leading member of a research group on Human Rights at the Otto-von-Guericke University. Since October 2013, he is professor emeritus. He studied Philosophy, Sociology and Political Science at the universities of Bochum, Frankfurt/Main, Munich, Heidelberg, and at the London School of Economics and served as Assistant Professor for Philosophy at the Free University of Berlin. He has published several books and numerous articles on Social, Political and Moral Philosophy and Applied Ethics. His main research interests are human rights, ethics and applied ethics.