

Universality of Human Rights

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1 What Is the Universality of Human Rights?

Universality is one of the essential characteristics of human rights. By definition, human rights are rights that apply to all human beings and are therefore universal. All human beings are holders of human rights, independent from what they do, where they come from, where they live and from their national citizenship, their community, etc. The universality of human rights is embedded in and also influenced by the other characteristics of human rights: human rights are categorical (every human being has these rights, they cannot be denied to anyone), egalitarian (every human being has the same rights), individual (human rights apply to every human being as individual and protect the latter from violations by a collective recognizing at the same time the important role of a collective for the individual), fundamental (human rights protect basic and essential elements of human existence) and indivisible (the whole catalogue of human rights must be respected, they are complimentary).

Georg Lohmann observes in the actual discussion about the universality of human rights that the terms “universalism“ and “relativism“ seem to build a pair of two contrary terms. But actually the counterpart for the first is “particularism” and “absolutism” for the second. Lohmann finds the reasons for this misconception in the assumption that universalism can only be legitimated by absolute justification and that a relative way of legitimating would lead to only a relative justification. (1) As a consequence, defenders of human rights try to provide a absolute justification of the universality of human rights as – following this assumption – a relative justification would not be adequate for the universality of human rights. In accordance with the observation of Lohmann, I would emphasize that the two term-couples do not have a direct relation and this has consequences for the understanding of the universality of human rights and the attempt of its justification. (2)

2 Particular Interests and Culture Diversity as Challenges for the Universality of Human Rights

Human rights struggle with particular interests, e.g. by states which claim the priority of their sovereignty over the universality of human rights or by the private sector which claims self-regulating approaches and uses this to define its sphere of influence within certain limits. This challenge is part of the political and legal dimension of human rights and as a consequence of the moral dimension of human rights as well. In this regard, one can recognize a positive tendency of acceptance of human rights by states, a growth of an international institutionalization for the protection of human rights and a progress of the mechanisms for monitoring human rights performances by states to respect the universality of human rights and some small steps by the corporate world. At the same time, it has to be stated that the implementation of human rights is not yet there where it should be, and that the vast majority of human beings are still victims of violations of their human rights. The universality is still a claim, not reality.

Human rights are challenged by cultural diversity as well. This challenge is taking place in the moral dimension of human rights. Although the UN Conference in Vienna 1993 reconfirmed the validity of the universality of human rights, the universality faced critics from different

sides because of its alleged western origin, e.g. in the so-called „Asian Values debate“. (3) At first sight, this could be surprising as human rights protect the freedom of the individual to religion and belief and to a cultural life (article 18 and 27 of the Universal Declaration of Human Rights of 1948) and therefore are enhancing cultural diversity. But human rights are individual rights and represent the perspective of the individual, not of the community: human rights do not protect traditions, cultures, religions,... as such but the freedom of the individual to share the beliefs, thoughts and world views of a community, to be part of a community and to practice their way of life. This difference is criticized as an individualistic bias of human rights, overlooking article 29. The latter positions the individual within its community and underlines the important role of the community for the development of the individual and the responsibilities of the individual within the community.

Charles Taylor (4) develops an approach of a consensus on human rights from different perspectives which is based on the „overlapping consensus“ of John Rawls (5): “different groups, countries, religious communities, and civilizations, although holding incompatible fundamental views on theology, metaphysics, human nature, and so on, would come to an agreement on certain norms that ought to govern human behavior”. (6) Taylor sees the possibility of such a consensus. Its content remains quite open in Taylor’s understanding. We would maybe assume that such a consensus would include human rights, but Taylor points out that the category „rights“ is a western concept and claims: „These norms have to be distinguished and analytically separated not just from the background justifications, but also from the legal forms that give them force.“ (7) According to Taylor, the striving for practical conclusions independent from their premises and from their different backgrounds, and the interest to understand our difference better lead to convergences. (8) The approach of cultural mediation applies similar ideas. (9) While I recognize the value of such considerations at a practical level, from a normative perspective I would question the unjustified assumptions of Taylor that the basic intention of human rights is accepted and that all cultures and traditions lead to the ideas and concept of human rights. At the same time, I would underline Taylor’s point that the recognition of the differences lead to a better understanding and supports human rights on a practical level. Concerning the dialogue about differences – this inter-cultural and -religious dialogue –, I would argue that this dialogue would benefit from a frame of reference, how this dialogue should be led in order to exclude the possibilities of discrimination and of arbitrariness. Human rights could serve as this frame of reference.

Yasuaki Onuma aims to overcome a narrow understanding of “culture“ from an inter-civilizational perspective. The latter allows him to include the economic, the social, the civil and the political dimension and to avoid its ideological and national use and to emphasize its historic dimension. (10) Onuma points out that cultures and civilizations are not eternal entities, they can change over time. He claims the same contingent nature for human rights as well. Too me this seems again convincing on a practical level. On a theoretical level I would argue in favor of a limitation of the flexibility of human rights. Of course human rights can develop and therefore changes can occur, but only in a limited way, e.g. it seems to be impossible to present acceptable reasons why some human beings should be excluded as holders of human rights. Acceptable could mean at this point that it is imaginable that all human beings would agree with these reasons when they could decide about them in a free and autonomous decision.

Regarding the universality of human rights, I would underline the fact that religions, cultures, traditions, world views and beliefs benefit indirectly from the human right to freedom of religions and belief. This right enables and enhances the authentic practice of an individual and so the peaceful coexistence of religions, cultures, traditions and world views and the dialogue between them. It is an achievement of humanity to protect this variety. Simone Zurbuchen points out: “While I do not deny that human rights establish moral boundaries, it needs also to be seen that these rights enable members of religious communities and of other variants of cultural groups to maintain their distinct identity.” (11) As the fundament of protection of ideas, traditions and beliefs, human rights can therefore in change expect to be respected by religions, cultures, traditions, world views and beliefs. (12) At this point, I need to emphasize in agreement with Yasuaki Onuma and with Otfried Hoeffe that religions, cultures, traditions, world views and beliefs should be understood as open for change, not as eternal absolute entities. Human rights do not stop before religions, cultures, traditions, world views and beliefs but influence them on a theoretical level. On a practical level, cultural mediation and an adaption of the implementation of human rights to the specific religious, cultural and traditional context is necessary to respect cultural diversity which is protected by human rights.

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Footnotes:

- (1) See Lohmann, Universalismus 5; Lohmann, Begründung 218-228.
- (2) See Lohmann, Universalismus 6.
- (3) See Senghass, Werte 5-12; Geiger/Kieserling, Werte; Zakaria, Culture 109-126. These critics can we find already in a similar way expressed by E. Burke in his polemic against the “Declaration des droits de l’homme et du citoyen de 1789”: Burke assumes that every human being must be treated with justice within the political system she/he is living in. The understanding of justice depends on the cultural and social conditions on a local level. Burke sees a variety of understandings of justice. Therefore the idea of unity included in human rights is for him an illusion. At the same time, Burke sees such a catalogue of human rights as a threat for political systems on a local level and their understanding of justice (see Burke, Reflections).
- (4) See Taylor, Conditions 124-144.
- (5) Rawls, Liberalism, lecture IV. This idea of an “overlapping consensus“ has its origin in the thinking of Jacques Maritain.
- (6) See Taylor, Conditions 124.
- (7) Taylor, Conditions 143.

- (8) Taylor underlines at this point the obligation of the West to deliver. See also Taylor, *Modernity*
- (9) See An-Na'im, *Mediation* 147-168; Chan, *Challenge* 25-38; Bell, *Challenge* 643-645.
- (10) See Onuma, *Approach* 29-30.
- (11) Zurbuchen, *Rights* 285.
- (12) See Hoeffe, *Tausch* 29-47.

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