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## REVIEW OF THE DOCTORAL DISSERTATION

Author: **Dr. Christian H. Kälin**

Title: **Citizenship and Human Rights: From Exclusive and Universal to Global Rights**

Supervisor: **Rev. Prof. Marek Urban**

### Research Scope and Goals

The dissertation submitted by Dr. Christian H. Kälin is conceived as a philosophical critique of what he calls “tension” or “dichotomy” between the universality of human rights and the actual particularity and locality of citizenship. The subject of his criticism is the possibility of the implementation of the universalist principles of the Universal Declaration of Human Rights in the contemporary world based on the “exclusivist” principles of citizenship and state sovereignty. The author’s main thesis is that insofar as in the current political system “bare humanity offers no protection” and “even individuals who are officially citizens don't necessarily have the same capacity to exercise their rights”, there is a need to develop new framework of human rights designed to their most possible enforcement. The aim of Dr. Kälin’s dissertation is not only to argue for the possibility of such a framework, but also to develop a new, critical discourse of human rights which would be conceived as not so much “universal”, but rather “global” and which would be “effective to co-exist with the exclusive rights of citizenship and the sovereignty of states”.

The doctoral thesis objective Dr. Kälin achieves in five subsequent steps to which correspond five chapters of his dissertation. In the first and second of them he examines the historical-philosophical roots and assumptions of the main concepts underlying the idea of human rights, that is the concept of “humanity” and “human dignity” respectively. In the first chapter Dr. Kälin reconstructs the understanding of the concept of humanity since Ancient Greece through Christian philosophy to the critique of this concept in Marx, Nietzsche and Freud. With reference to various philosophical approaches that explore the exclusivist nature of this concept he argues that both Christian definition of humanity, based on the concept of *imago Dei* and Christian brotherhood, and Enlightenment definition of humanity, based on reason, have an exclusivist character. In his interpretation, insofar as these understandings of humanity are foundational also for the modern idea of universal human rights, the human rights discourse represents today a “particularistic doctrine with universalist claims”. While pointing out that the contemporary notion of humanity which derives from this legacy does not include everyone, but only a limited group of people, Dr. Kälin considers the very idea of these rights to be paradoxical and abstract and argues for the necessity of its re-examination.

In second chapter of his dissertation, the objective of which is the reconstruction of the philosophical and historical roots of the concept of human dignity, Dr Kälin attempts to show that also dignity does not represent a universal moral value as it is emphasized by the Universal Declaration of Human Rights and other human rights documents. He argues that insofar as concept of human dignity does not originate from the legal discourse, but is introduced into these documents without clear definitions, also its meaning is largely uncertain. While analyzing the understanding of this concept through the ideas of ancient Greek philosophers, Christianity, medieval and Renaissance humanists, Kant, and contemporary philosophers, Dr. Kälin attempts to examine whether the concept of human dignity has a philosophical meaning that is independent of certain doctrines. What he reconstructs in this chapter, is how the idea of special intrinsic value of human life expressed in terms of the human dignity ultimately led to the formulation of modern-day human rights.

Dr. Kälin explains in second chapter of his dissertation the historical and political reasons why the concept of human dignity in American and French Declarations was only implicitly asserted and why the concern in pursuing human rights and human dignity to their fullest extent would have to wait until the *Universal Declaration of Human Rights* of 1948. While taking into consideration the “overlapping” between human dignity and human rights, he analyzes the nature and scope of the current concept of human dignity by paying attention to the manner in which this concept functions in the contemporary human rights discourse. According to Dr. Kälin, in the *Universal Declaration of Human Rights* a critical shift takes place from dignity as an essential feature of human beings to dignity as a property which, as *subject to contingency*, turns out to be by no means rigorously inherent and inalienable. This significant ambiguity concerning the conceptual status of human dignity in contemporary human rights discourse he interprets as responsible for the paradox inherent to this concept. It is supposed to consist in that, on the one hand, we regard human dignity as the root from which human rights stem and, on the other, we consider human rights to be protections of that dignity. What Dr. Kälin problematizes, is the universality of human dignity from the perspective of this ambivalence, the question to what extent is understanding of human dignity determined by a particular European or Western tradition of thought.

Third chapter Dr. Kälin dedicates to the elucidation of the central problem of his dissertation which is the dichotomy between the human rights and citizenship. Insofar as the universalism of human rights is challenged, in his interpretation, by the fact that their assertion in contemporary world is based on the particular and exclusive right to citizenship, Dr. Kälin problematizes here the belief that these rights should be the normative foundation of world politics and all cultures. The aim of the philosophical critique of the human rights discourse attempted here is not only to reveal dichotomies and “binary hierarchies” on which the idea of human rights is based, but also to answer the question about the possibility of transcending by them these dichotomies and oppositions. The paradoxical nature of the idea of human rights, interpreted and applied differently in different societies, Dr. Kälin discusses in this chapter while pointing out, a. o. with reference to Judith Butler, that the notion of the *universal* is problematic in itself. In his examination of the universality of human rights, he refers to the numerous positions from the contemporary debate arguing for the cultural relativity and contingency of these rights. Dr. Kälin inclines in this chapter to agree that the principles contained in the *Universal Declaration of Human Rights* are the product of the Western political history. He admits that in practice and in political philosophy, human rights are always contextual and not universal. Nevertheless, as he argues with reference to Butler, the confinement of the concept of universal human rights to the Western moral philosophy does not deny the usefulness of this very term. According to Dr. Kälin, the way to rethink the concept of the universal human rights and to overcome the dichotomies on which it is based is to admit that “the nature of human rights is dynamic” and that what remains is “to be seen whether and how it will be fully articulated”.

The possibility of overcoming the dichotomies inherent to the universal human rights discourse Dr. Kälin seeks in the revised version of Aristotle's virtue ethics. In the third chapter of his dissertation he argues that insofar as the contemporary human rights discourse relies at its core on Kant's "abstract and "formal" idea of humanity and human dignity, it is only with recourse to Aristotle's, pre-Christian and pre-Western, normative focus on practical reason (*phronêsis*) that it is possible to provide a new theoretical framework of these rights. What Dr. Kälin presents as especially significant for rethinking the contemporary idea of human rights is Aristotle's conception of human nature and empathy as a source of moral knowledge. The useful starting point for discussing the dichotomies and contradictions of contemporary political discourse he considers post-Aristotle's "ethics of care" which he contrasts with Post-Kantian, universalist "ethics of justice". In Dr. Kälin's interpretation, Aristotelian philosophy, especially together with his theory of emotions, turns out to be significant for developing a broader understanding of universalism which would not consist in an essence or human nature that we are all said to have or to possess, but which would open up space for a contextual approach to the experiences of establishing commonality across diversity, conflict, divide, and struggle. As he argues, "universalism is an aspiration, a moral goal to strive for; it is not a fact, a description of the way the world is".

In fourth and fifth chapter of his doctoral dissertation Dr. Christian H. Kälin discusses the conditions of possibility of the new framework of human rights aimed by his research. Insofar as the main assumption of his dissertation is that in the current political system "human rights are as broad and narrow and as exclusive as citizenship itself", he starts this discussion with analyzing the ideas of cosmopolitanism and world citizenship. What Dr. Kälin examines in fourth chapter, is to which extent the reconceptualization of the notion of citizenship from the cosmopolitan perspective could contribute to the solution of paradoxical nature of human rights and to overcoming the conflict between citizenship and humanity. He argues here that one of the conditions of overcoming the dichotomies inherent to the modern human rights discourse is in the first instance the emergence of post-national models of citizenship based on the postmodern idea of political identity. According to Dr. Kälin, the traditional, modern idea of this identity based on what people share in common, like for example nationality, should be reinterpreted and re-conceptualized in the direction of a postmodern multilayered notion of identity based on the idea of multiple membership. The conclusion of the examination carried out in this chapter is that only postmodern idea of this identity that includes complex systems of duties and rights and takes into consideration global, regional, national and local aspects can serve as the basis for a new civic culture.

The aim of the fifth chapter is to perform main objective of the dissertation that is to develop a new theoretical framework of human rights which would overcome the dichotomies between the idea of humanity and citizenship. Dr. Kälin attempts here to reinterpret the Western culture of citizenship by separating it from the metaphysical worldview of Enlightenment and disconnecting the human rights discourse from the exclusivist, modernistic idea of citizenship. With reference to David Held's idea of reconstructing democracy in the modern global order, Martha Nussbaum's capabilities approach and many others contemporary approaches to the concepts of human rights and citizenship taken in this chapter into consideration, Dr. Kälin aims here to translate the idea of universal human rights into theory of global human rights which would overcome the tensions between the global and the local. The most direct theoretical background of this translation is for him John Rawls's conception of human rights, in the first instance Rawls's critique of moral universalism and emphasis put by him on the "dynamic" nature of these rights. Dr. Kälin argues in the last chapter of his dissertation that instead of the *Universal Declaration of Human Rights* and other human rights documents which represent a modernist account of human rights based on Western moral universalism a new theory of Global Human Rights is needed. This theory, according to him, has to reflect the postmodern conception of human rights that is to break up with this universalism, to include diversity and to be, as such, fundamentally liberal.

## **Methodology**

In his study concerning the transformation of contemporary ideas of citizenship and human rights in light of the challenges of post-national and postmodern political discourse Dr. Kälin declares employing the hermeneutic methods. What justifies the hermeneutic approach to the changing, as he argues, relationship between these ideas is according to him the dynamic character of legal concepts and lawmaking instruments. For Dr. Kälin it is in the first instance the dynamics and historicity of the concepts of human rights and citizenship themselves which allows to consider them to be hermeneutic categories and which justifies the application of the hermeneutic method in investigating the transformation of their nature. As a legal basis of this interpretative methodology he points out the rulings of the European Court of Human Rights quoted by him which indicate the hermeneutic dimension of law and thus emphasize the necessity of enriching the analytic approach with a hermeneutic perspective. As his theoretical points of reference with this regard Dr. Kälin declares, among others, John Rawls's conception of human rights and Chaim Perelman's theory of juridical logic. If the conception of Rawls is supposed to open up a space for a hermeneutical approach insofar as it allows for multiple justifications for these rights, the theory of Perelman is relevant for him to the extent as it considers legal practice to be an interpretation that should include empathy and care, and not just be based on rationality.

By the hermeneutic method applied in his study Dr. Kälin understands, firstly, the analysis of different philosophical approaches to the notions of citizenship and human rights, on which the contemporary conceptions of citizenship and the contemporary idea of universal human rights are based. The hermeneutic analysis which he carries out is also supposed to consist, secondly, in a close reading of human rights documents and philosophical works on citizenship and human rights. By a close reading Dr. Kälin understands, on the one hand, "focusing on specific words, as well as the order in which ideas and sentences develop" and, on the other hand, "placing the text in its historical, social, political or philosophical context". What is supposed to justify the interpretative, contextual approach to human rights taken by Dr. Kälin is, apart from the dynamic, not static nature of the subject of his dissertation, his criticism against the dogmatic, pure formal-analytical approach to them which results in uncritical imposition of liberal ideals on which the idea of human rights is based. Dr. Kälin argues that what decides about the necessity of a hermeneutic turn in understanding of human rights, which has to consist in a qualitative, that is subjective, non-representative and incomparable approach to them, is that such imposition contradicts the very idea of liberalism.

## **Overall Evaluation**

The doctoral dissertation submitted by Dr. Christian H. Kälin not only represents an independent and comprehensive piece of scientific work of high academic standard. It is also an exciting study of one of the crucial political problems which we face today and which gives rise to the most political crises taking place in the contemporary world: apart from migration crisis also political identity crisis, populism, "seductive lure of authoritarianism", speaking with Anne Applebaum, and many others. What decides about the undeniable theoretical significance of his scientific endeavor, is the ability proven by Dr. Kälin not only to the precise definition of the problem of the relationship between the idea of human rights and the idea of citizenship, but also to look at this problem from different perspectives. Even though the problem of universality of human rights is widely discussed in the pertinent literature, the question of the complex philosophical background of the dichotomy between humanity and citizenship was still not sufficiently explored. While referring to the enormous literature on the foundations of the normative status of human rights, to the works of John Rawls, Samuel Huntington, Seyla Benhabib, Michael Ignatieff, Eric Posner, Costas Douzinas among others, Dr. Kälin also competently presents the state of art on this dichotomy. What distinguishes his contribution to this problem field from the approaches of, for instance, Aoileann Ní Mhurchú, Kate Nash, Harald Bauder, Christian Matheis or Costas Douzinas also taken by him into consideration, is his

contribution to not only legal, but also philosophical analysis of the exclusivist nature of the main concepts on which the idea of human rights is built.

The most interesting analyses carried out by Dr. Kälın concern the central both theoretical and practical problem of his dissertation which is the question of global enforceability of human rights. Dr. Kälın reconstructs very convincingly the arguments against Western moral universalism based on the Enlightenment concept of humanity and human dignity and points out precisely the paradoxes inherent to the attempts to enforce human rights at an universal level. Far from being biased against the ideas of Enlightenment, he searches in his dissertation for the possibility of overcoming the internal "dialectics" of this not only philosophical, but also social and political project. While taking into consideration the destructive consequences of the "relentless" rationalism of Enlightenment, the expression of which turned out to be in the nineteenth and twentieth century "organized mass violence of the later French Revolution" and "horrors perpetrated by imperialism, Communism, Fascism, and Nazism", Dr. Kälın draws our attention to also contemporary threats posed by its radical universalism. With reference to the authors such as Samuel Huntington, Charles Taylor or Martha Nussbaum he stresses the differences between different civilizations which make the concept of universal human rights "illusory". By his search for a new, "narrow" and more moderate conception of human rights, for their framework that would not disregard the fact that "the people of different civilizations have different views on the relations between God and man, the individual and the group, parents and children, husband and wife, as well as differing views of the relative importance of rights and responsibilities, liberty and authority, equality and hierarchy", Dr. Kälın proves both theoretical maturity and practical sensibility of his philosophical approach.

Particularly important and theoretically relevant seem to be critical arguments quoted by Dr. Kälın against the declared universality of human rights that point at the internal incoherence between their different "generations". Dr. Kälın argues that the concept of human rights remains ambiguous insofar as it refers, apart from the first generation of these rights, which includes civil and political rights, also to their second and third generation. In contrast to the first generation, focused on the rights of the individual, the subsequent generations are supposed to include, as he notices, the rights that are collective in origin and founded on solidarity, such as social, economic, and cultural rights, on the one hand, and the right to peace, the right to development, the right to a healthy environment, the right to humanitarian assistance and so forth, on the other. It is impossible not to take seriously the objection against the universality of human rights raised by Dr. Kälın that consists in drawing attention to the role of cultural differences in implementing these their different generations. Insightful and relevant is his observation, that the internal incoherence of human rights opens space for prioritizing, as in case of China, their second and third generation over the first generation which Western democracies emphasize. It is also not easy to refute Dr. Kälın's argument that in spite of violating many human rights of the "first generation" in China, the significant Chinese achievements in lifting about a billion people out of poverty in the last few decades and thus in implementing the second and third generation of these rights compels "to abandon the illusionary universalistic definition of human rights and promote a contextual approach to human rights".

### **Critical Remarks**

Of course, the theses defended by Dr. Kälın in his dissertation are by no means self-evident. Also the conception of Global Human Rights delivered by him with reference to John Rawls and based on the moral-philosophical Golden Rule deserves, as such, a thorough discussion which would go beyond the scope of the present review. Even if it is only to agree with Dr. Kälın that "rights are only useful if they are enforceable", the conclusions drawn by him from this statement are far from being obvious. His assumption that due to the failures in the global enforcement of human rights we must reduce the rights that we aim to achieve "to a common denominator, to a minimum set of values, of rights, that we can say that could exist also across states and across all cultures and times" seems to contradict radically any idea of moral progress in human relations. Especially the willingness of Dr. Kälın to

sacrifice the rights of the individual on the altar of their second and third generation can give rise to an objection of moral or at least liberal capitulationism. Leaving aside the question of the relationship of “Western individualism”, condemned by Dr. Kälin, to the Christian idea of individual salvation, it is by no means clear how his willingness to such sacrifice is to reconcile with his statement about the “fundamental liberalism” of the theory of Global Human Rights developed by him.

Although Dr. Kälin’s doctoral dissertation is based on a very wide range of the literature on the subject, the absence of certain items that are obvious in some contexts is puzzling. Taking into account his fundamental criticism of Kant’s ethical formalism, one could expect him to make a broader reference to those positions in twentieth-century philosophy that are considered classic in this respect. For instance, given the stress put by Dr. Kälin on the relevance of the term “person”, which, according to his observation, is gradually replacing the “citizen” in the global constitutional terminology, it could seem natural to take, to some extent, into consideration the criticism against Kant’s concept of rational subject carried out by Max Scheler in his *Formalism in Ethics and Non-Formal Ethics of Values* from the perspective of ethical personalism. Scheler’s standpoint, especially his analyses of the nature of “sympathy”, seems to be by no means irrelevant also when contrasting “ethics of justice” with “ethics of care” – the same can be said about Edith Stein’s analyses of the essence of “empathy” recognized by Dr. Kälin as “still not a well-defined concept”. The generally phenomenological perspective represented by Scheler could provide Dr. Kälin with a useful point of reference also in context of his investigation on the limits of universality of human rights. Particularly promising seems to be the reference to the theoretical approach to the normative foundations of law initiated by Adolf Reinach in his study on *The A Priori Foundations of Civil Rights*. Insofar as Dr. Kälin considers Aristotle’s virtue ethics essential to rethinking Kant’s idea of humanity, his doctoral dissertation could only gain by taking into consideration Alasdair MacIntyre’s communitarian moral philosophy.

In closing this review, it is impossible not to highlight some technical issues that significantly reduce the quality of Dr. Kälin’s doctoral dissertation. The dissertation submitted for evaluation not only abounds in numerous quotations, but is actually overloaded with them. In many places in the dissertation, the order of argument is not clearly distinguished from the order of citation. The structure of the text suggests that the author is more interested in providing specific references to individual steps of the argument than in subordinating them to the internal logic of what he argues for. As a result, the author’s person is not only hidden behind the presented text, but even disappears behind the combination of quotations that constitute it. Reading the dissertation is also not made easier by numerous, irritating mechanical repetitions of specific quotes or threads. The observation about the “Asian values” and the different way the Chinese government refers to different generations of human rights or this about the right to freedom of expression as differently exercised in different countries returns several times in the text. The text of the dissertation seems particularly fixated on Kant’s theses regarding human dignity, which are discussed there, often with reference to the same quotations, many times.

## **Conclusion**

Summing up the whole review, it can be concluded that Dr. Christian H. Kälin’s doctoral dissertation is an independent and original solution to the scientific problem, which is the question of the philosophical roots of the dichotomy between human rights and citizenship. I consider the dissertation presented by Dr. Kälin to be a scientific achievement that, to a large extent, meets academic standards in relation to the formulated research questions, theoretical and methodological foundations, the use of sources and literature on the subject, as well as the form of presenting research results. Dr. Kälin has done a huge and significant work contributing to rethinking the discourse of human rights in light of their undeniable erosion that we are facing also in the most immediate political context. While identifying the metatheoretical assumptions on which the idea of human rights is based as well as while investigating the transformation of their nature in light of the challenges of post-national and postmodern political discourse he also convincingly justified why rethinking of this discourse is

necessary today. To the extent as Dr. Christian H. Kälin has demonstrated both general theoretical and detailed historical knowledge in the field of philosophy required by law, I support granting him a doctoral degree in philosophy on the basis of submitted dissertation.

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