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Citizenship and Human Rights From Exclusive and Universal to Global Rights

Summary

My dissertation offers a legal-philosophical critique of the tension between the supposedly universal human rights and citizenship. It also explores whether the emergence of postnational models of citizenship that aim at decoupling human rights and citizenship succeed in overcoming tensions between the *universal* (multiculturalism; universal human rights; postnational values) and *particular* (citizenship; borders; national values and diverse local narratives).

The work demonstrates that as long as there is a tension between *humanity* and *citizenship* within the human rights discourse, it is normatively illegitimate to speak of *universal* human rights, *universal* human dignity, or *universal* social justice. The current system of dividing the world into sovereign nations which use citizenship and immigration laws to distinguish and protect themselves from others, is *per se* incompatible with the notion of universal human rights and dignity, and social justice.

The concept of humanity based on reason excludes a large range of individuals. In the past, it excluded slaves, women, workers, African Americans, and today it excludes undocumented migrants, collective groups of people — for instance, Palestinian citizens in Israel, indigenous peoples and so on. Even individuals who have formal citizenship status do not always have the same ability to fulfill their rights.

The problem is not only with the spatial diversification of the enjoyment of rights reinforced by citizenship, but also with ineffectiveness and ambiguity of human rights, and their exclusivist nature. Someone is a person of a lower or higher degree, depending on whether he/she is a citizen. We become human through citizenship, and the subjectivity is based on this gap — the difference between the universal man and the citizen of the state.

The dissertation investigates the philosophical nature of the concepts that represent the foundation of the idea of human rights. The main idea which is presented is that the human rights discourse is based on various metanarratives, which create tensions between *humanity* and *citizenship*, and that the human rights discourse represents a particularistic doctrine with universalist claims. Metanarratives are socially, politically and historically constructed — thus, they cannot be measured by truth and falsity. They, actually, reflect various power relations and power structures. Metanarratives describe political, social, historical or cultural output based on a coherent, monolithic, one-dimensional perspective, which becomes dominant, widely accepted point of view in public discourse.

The main research questions explored within this study are:

- Philosophical analysis of the supposed universality of human rights;
- Challenging universal human rights on ontological, epistemological and axiological grounds;
- Philosophical roots of the idea of a universal humanity based on reason;
- Philosophical approaches to the idea of human dignity;
- Humanity vs. citizenship: tensions between the *global* and *local*;
- Clash between postnational and national values;
- Reconceptualizing the ethics on which human rights are based and developing the idea of social justice that is not be based on the essentialist notion of humanity.

Although the problem of supposedly universal human rights is widely discussed, the question of philosophical roots of the tension between *humanity* and *citizenship* has not yet been sufficiently explored. Although some works explore this tension, they do not offer a philosophical analysis of the exclusivist nature of the main concepts on which the idea of human rights is built. Identifying metatheoretical presuppositions on which the idea of human rights is based is necessary for rethinking human rights discourse. The broader aim of this project is to contribute a substantial study of the transformation of the nature of human rights and citizenship in the light of challenges of postnational and postmodern political-philosophical discourse.

Chapter 1 examines the philosophical roots of the concept of humanity on which the idea of human rights is based. This chapter shows that the concept of humanity is abstract and exclusivist and that the concept of human rights actually constructs who and how one becomes human. The notion of humanity does not include everyone (as the Universal Declaration of Human Rights states/claims), but only a limited group of people. Therefore, the notion of humanity, which derives from the legacy of classical philosophy, Christianity and the Enlightenment, needs to be re-examined. The concept of humanity has always excluded numerous individuals. In ancient Greece, the institution of slavery was justified by the belief in the absolute supremacy of the Greeks over the non-Greek peoples. In Plato's ideal state, only a small group of people enjoys the right to human dignity. According to Plato, there are three classes of citizens: rulers, soldiers and producers. Plato's idea of the just state is analogous to his idea of the soul. They are both hierarchical. According to Aristotle, the essence of a human being is the capacity for an ethical life. Christianity makes a sharp distinction between Christians and pagans—the universal and the particular, the heavenly and the earthly. Christianity determined the position of man in the world in a new way, and gave new meaning to human existence. Christianity is based on a dualistic view of man consisting of two parts — the human soul, on the one hand, and the human body, on the other. Enlightenment philosophy equates the subjectivity of the white male with a category of humanity excluding slaves, women, children, and foreigners. Human rights documents define humanity as an abstract, universal concept because they rely on the idea of the abstract citizen promoted by the Enlightenment project. Enlightenment philosophers universalised the human being, ignoring cultural, religious, political and other differences. The Declaration of the Rights of Man and of the Citizen was influenced by the concept of man defined by the philosophers of the Enlightenment. This declaration proclaims the natural, unalienable, and sacred rights of man, which should be

respected because men are born and remain free and equal in rights. Marx, Nietzsche and Freud question the Enlightenment idea of subjectivity. Hannah Arendt criticises the idea of humanity used in human rights documents. Representatives of poststructural and postmodern thought aim to deconstruct the notions of humanity and political subjectivity on which the discourse of human rights is based.

Chapter 2 examines philosophical and historical roots of the concept of human dignity and shows that dignity does not represent a universal moral value as it is emphasised by the Universal Declaration of Human Rights and other human rights documents. Many authors warn of the deliberate and unconscious manipulative uses of dignity by specific doctrines that employ human dignity to pass off parochial and controversial ideas as universal, self-evident, and uncontested truths. Despite its widespread use, the meaning of the concept of human dignity is largely uncertain. The concept of human dignity does not originate from the legal discourse, but is introduced into human rights documents and various constitutions without clear definitions. The concept of human dignity has a significant philosophical history, which must be taken into account when exploring the meaning of this concept. Thus, clarifying the concept of human dignity within legal and political discourse requires an analysis of this concept through the history of philosophy. Chapter 2 explores the concept of human dignity through the ideas of ancient Greek philosophers, Cicero, Seneca, Christianity, medieval and Renaissance humanists, Kant, and contemporary philosophers. One of the main goals of this chapter is to understand how philosophy built the idea of a rational and autonomous human being, which is the foundation of the modern conception of human dignity. This chapter examines whether the concept of human dignity has a philosophical meaning that is independent of certain doctrines, and it also investigates whether the philosophical idea of human dignity reflects tensions between the universal (humanity) and the particular (citizenship, culture, religion).

Chapter 3 examines the idea of universality of human rights and the problem of decoupling universal human rights and citizenship. Supposedly universal human rights also face a hermeneutic challenge — they are interpreted and applied differently in different societies. For example, the right to freedom of expression is exercised differently in the USA, France and Islamic countries. Human rights law blandly acknowledges that the right to freedom of expression may be limited by considerations of public order and morals. But a government trying to comply with the international human right to freedom of expression is given no specific guidance whatsoever. Thus, it does not seem possible to construct a substantive meta-narrative that is able to satisfy the demands of our various traditions and at the same time be applicable universally. Chapter 3 shows that binary oppositions still exist in world politics, such as global/local, transnational/national, West/East, and so on. Universal human rights have never been fully realised in practice because of the contrast between international order and nation states, universal human rights and citizenship, and global and national/local. This is evident in the example of the human rights crisis in Afghanistan, the human rights crisis in Myanmar and China's challenge to international human rights.

Chapter 4 explores whether the emergence of postnational models of citizenship that aim to decouple universal human rights and citizenship succeed in overcoming tensions between the universal (global) and the particular (local). It shows that the notion of political subjectivity on which these postnational conceptions of citizenship are based requires a postmodern idea of political identity to be effective. Postnational citizenship is based on the idea of multiple

membership that includes complex systems of duties and rights, as well as a multilayered concept of identity that includes global, regional, national and local aspects. Postnational concepts of citizenship are based on personhood, not nationality. Although postnational citizenship made a shift from emphasising common nationality to emphasising common humanity, it retained the modernist idea of identity, which defined both categories as monolithic. In this way, both categories, humanity and citizenship, are exclusivist. This multilayered notion of identity can serve as the basis for a new civic culture that is not based on one universal grand narrative, but includes different narratives.

Chapter 5 develops a new theory of global human rights that aims to overcome the tensions between the global (universal human rights, humanity, etc.) and the local (citizenship, particularist identities and values). It describes a new conception of civic culture and a philosophical ethic rule on which to base all global human rights. This chapter aims to break the link between human rights discourse and an exclusivist, modernist idea of citizenship. Chapter 5 attempts to reinterpret the Western culture of citizenship and human rights and separate it from the universalistic metaphysical worldview of the Enlightenment that created a dichotomy between humanity (universal human rights) and citizenship. David Held's idea of reconstructing democracy in the modern global order, reinforced by Martha Nussbaum's capabilities approach, is highlighted in Chapter 5 as having the potential to help rethink the concept of universal human rights. John Rawls's conception of human rights is presented and forms part of a solution for reconstructing the idea of universal human rights. Unlike human rights documents, Rawls's idea of human rights recognizes the dynamic and contextual nature of human rights. It is necessary to rely on a contextually oriented and hermeneutic approach to human rights in order to reconstruct the contemporary human rights discourse. With this, we can develop a new theory of global human rights based on different cultural perspectives, as well as to include different contexts, views and circumstances in the human rights discourse. Global human rights are shown to be what can be a globally acceptable standard that could be acceptable and thus realistically enforceable and more compatible with the system of exclusive, state-based citizenship which remain the effective source of human rights.

Cracow, 04.12. 2023

A handwritten signature in blue ink, appearing to read 'Ueli', is positioned below the date. The signature is fluid and cursive.