

The Content, Theory and Critique of Current Human Rights Revisionism

CONVENOR: Matthias Mahlmann (University of Zurich)

The workshop intends to explore the content and theory of current human rights revisionism. In recent years, a sustained historical, theoretical, sociological and anthropological critique of human rights has been formulated. This critique has provoked much debate about the foundations and prospects of the grown architecture of human rights protection since 1945. The revisionist arguments form a particular challenge to the project of human rights that substantially questions the legitimacy and practical prospects of this normative idea.

The workshop will engage with a variety of perspectives, trying to reconstruct major positions and reflect about possible shortcomings of these approaches. This reflection will lead to fundamental questions at the core of the philosophical understanding of human rights and the idea of justice.

George Letsas (Professor of the Philosophy of Law, University College, London), **Maximalist vs Minimalist Theories of Human Rights: A False Dilemma?**

How demanding should human rights be? Within a deontological moral framework, rights and goals behave very differently in relation to questions about demandingness. In this paper I aim to show that one of the main worries about maximalist conceptions of human rights stems from thinking about them as goal-based considerations. This has been the dominant way of thinking about human rights amongst key institutional actors, such as the United Nations bodies and human rights NGOs. By contrast, human rights courts take a pre-dominantly deontological approach when adjudicating on individual claims. When human rights claims are understood in deontological terms, the dilemma between minimalist vs maximalist conceptions of human rights evaporates. This does not necessarily mean that a goal-based approach is politically useless, or philosophically confused. It simply means that, in contexts where human rights rightly operate as deontic constraints (as in the case of judicial enforcement), there is no choice between conceiving them maximally or minimally; they are as demanding as the underlying moral obligations.

Nicole Nickerson/Youlo Wujohktsang (University of Zurich), **Feminist movements and the critique of human rights**

Recent years have seen an increase in women's groups organizing themselves. In light of the shifting political climate, the potential and the need of a feminist critique of the human rights system deserve to be reassessed. The grassroots activism of feminist movements will therefore be discussed in order to disentangle common misconceptions surrounding the legitimacy of their political claims and their modus operandi.

Matthias Mahlmann (Professor of Philosophy and Theory of Law, Legal Sociology and Public International Law, University of Zurich), **One step too far – some philosophical and political parameters of the current critique of human rights**

The critique of human rights is an important element of the observable weakening of the human rights idea in more than one political system. It is bad news if one does not only have to fend off the obvious fiends of this idea, but also confront the attempt to wrench off the hand of human rights advocates, by theoretical means, one of the most powerful weapons they have in their struggle – the conviction that human rights are justified beyond reasonable doubt because the idea stands the test of critical reflection informed by historical experience.

There are many theoretical questions to be addressed. There are however, a few issues that stand out and merit closer attention. They all take their starting point from a valid point of normative theory but then make one step too far in the wrong direction, which leads to unfortunate conclusions about the project and idea of human rights. The following remarks will, in a rough sketch, outline some of the major points that seem to be of interest here which include: Historical critique and historicization;

genealogy and legitimacy; human rights and the service to power; relativism and toleration; the problem of anti-essentialist overdrive; meta-ethical scepticism and its limits; dignity and the project of human rights.

Andras Sájo (Professor of Law, Central European University, Budapest; Former Vice-President, European Court of Human Rights), **The fate of human rights in indifferent societies**

This paper deals with concepts and ideologies that undermine human rights, and not with the likely actual demise of human rights. It illustrates the diminishing political and public respect towards human rights. It claims that this growing public disrespect is a function of

- changing international relations where illiberal regimes become more and more influential, and;
- domestic developments, namely
- the emergence of a narcissistic, consumerist culture with an interest in identity;
- rising populism and related identity politics; and
- return to the strong nation-state that promises security.

John Tasioulas (Professor of Law, Director, Yeoh Tiong Lay Centre for Politics, Philosophy, and Law The Dickson Poon School of Law, King's College London), **Savings Human Rights from Human Rights Law**

The paper argues that the populist backlash against human rights should, at least in part, alert us to the ways in which international HR law has overstepped its proper bounds (as determined by the objective of giving proper effect to a background morality of human rights. I focus on 2 ways in which IHRL has overstepped its bounds in this way: (a) ignoring the distinction between rights and interests, and (b) uncritical enthusiasm for legalising human rights and rendering them justiciable.

John Mikhail (Professor of Law, Georgetown University, Law Centre, Washington, D.C.), **New perspectives on human rights: problems and prospects**

Abstract to follow

Angela Müller (University of Zurich), **Addressing the Relativist Objection to Extraterritorial Human Rights Obligations**

The relativist approach holds that values and normative principles cannot be universally and objectively valuable but are so only relative to specific cultures. The idea is that people in different societies as well as over time diverge on their normative positions, as they are highly influenced by their socio-cultural setting. Consequently, each cultural setting has its own set of fundamental rights, which derives from these differing values. If a state discharges obligations generated by its own conception of basic rights extraterritorially to members of other societies, it acts in a *parochialist* way: It imposes its set of basic rights on others who do not share it. Some argue that today's international human rights law mirrors a Western understanding of what rights human beings shall be assigned and thus amounts to an *ethnocentric* conception. It does, for example, not adequately reflect what has been termed "Asian Values". It would amount to an imperialistic act to impose such a conception on cultures that adhere to other values, the argument concludes.

The aim of the present contribution is to address these and further arguments that reject the legitimacy of extraterritorial application of human rights based on such a relativist perspective. In doing so, it emphasizes the necessity of providing a justificatory theory of extraterritorial human rights obligations and hints at potential elements of such a theory.

Catharine A. MacKinnon (Elizabeth A. Long Professor of Law, Michigan Law & James Barr Ames Visiting Professor of Law at Harvard Law School)

Title and abstract to follow