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Marion Albers
Thomas Hoffmann
Jörn Reinhardt *Editors*

Human Rights and Human Nature

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marion.albers@uni-hamburg.de

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marion.albers@uni-hamburg.de

Marion Albers • Thomas Hoffmann • Jörn Reinhardt
Editors

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marion.albers@uni-hamburg.de

Editors
Marion Albers
Faculty of Law
University of Hamburg
Hamburg, Germany

Thomas Hoffmann
Philosophy Department
Otto-von-Guericke University Magdeburg
Magdeburg, Germany

Jörn Reinhardt
Faculty of Law
University of Hamburg
Hamburg, Germany

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marion.albers@uni-hamburg.de

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marion.albers@uni-hamburg.de

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marion.albers@uni-hamburg.de

Chapter 1
Human Rights and Human Nature: Introduction

Marion Albers, Thomas Hoffmann, and Jörn Reinhardt

Recourse to the concept of human nature has always played a prominent role in the justification and defense of human rights. The idea has its roots in ancient philosophy and in religious traditions and also extends to early modern natural rights thinking. "Human nature", as a concept, is still widely used in contemporary philosophical and juridical human rights discourse as a way of justifying the universal and egalitarian validity of the claim of human rights. And in spite of historical changes in the use of the concept of human nature and its ontological implications, the idea that basic rights belong to all humans in the same way is re-affirmed in central contemporary human rights documents.

The specific nature of the human species seems to provide answers to some of the most controversial questions concerning human rights: questions about their scope and content, their universality and their basis of justification. Arguments from human nature are taken up to substantiate claims for human rights, and sometimes even to limit the growing list of rights in international human rights documents. In any case, human nature is taken as an argument that makes a difference.

But the attempt to reconsider the relevance of human nature for human rights is exposed to several difficulties. In the first place, it requires a reevaluation of the almost infinite and complex lines of "naturalistic" arguments which exist in the context of fundamental rights. The claim that basic human rights can be justified with recourse to arguments from human nature is a thesis about the justification of the universal validity of basic rights for human beings. But it is obviously not an ontological thesis about the existence or the origin of the rights in question. Since

M. Albers (✉) • J. Reinhardt
Faculty of Law, University of Hamburg, Rothenbaumchaussee 33, 20148 Hamburg, Germany
e-mail: marion.albers@uni-hamburg.de; joern.reinhardt@uni-hamburg.de

T. Hoffmann
Institute for Philosophy, Otto-von-Guericke-University Magdeburg, Universitätsplatz 2, 39106, Magdeburg, Germany
e-mail: Thomas.Hoffmann@ovgu.de

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marion.albers@uni-hamburg.de

human beings do not have rights in the same way as they have hands or legs, rights cannot be understood as a "natural" kind. The function of referring to human nature in the context of human rights is a different one, namely an argumentative function.

Of the various directions naturalistic arguments can take, one can distinguish, roughly speaking, between two main approaches, an externalist and an internalist one. Externalist approaches try to justify elementary moral and legal principles from "outside" our normative or evaluative vocabularies. The reductive ambition is to trace a normative concept back to certain non-normative descriptions of human beings as formulated in the vocabularies of the natural sciences. The result of these descriptions is supposed to make plausible why every human being, simply as a member of the species, has basic rights – regardless of whether the existing laws of particular states actually give their citizens such a right or not. In contrast, internalist approaches try to justify the universal validity of human rights by referring to a concept of human nature that is normative from the beginning. A prominent example is that of the various versions of "neo-Aristotelian naturalism" that are used in some contemporary moral theory approaches but may also be used to justify human rights and their claim to universality. The objections that are almost reflexively made against the various naturalisms (the Is-Ought relation and the objection of a naturalistic fallacy) affect externalist approaches more than non-reductive approaches. Nevertheless, major problems remain for naturalistic argumentations of any kind.

Presenting universal human rights as somehow being natural rights is not the only idea that looks back on a long tradition; indeed, the critique of this idea is as old. Most objections against the very idea of human rights still echo in one way or another Edmund Burke's critique or Jeremy Bentham's famous polemic of "nonsense upon stilts". Despite their different convictions and political commitments, both authors sharply criticized the natural law-justification of modern human rights documents. Their main objection centered on the argument that substantial rights can only exist within the framework of an existing legal system; this is required not just for conceptual reasons but also for effective enforcement. According to this critique, the idea of the existence of pre-constitutional rights, whether they be natural or even moral, is highly misleading, for the concept of a pre-constitutional right is as plausible as the concept of wooden iron.

Further difficulties concern the content of human nature. A list of essential features of human nature runs the risk of being only a particular and culturally bound expression. The more materially rich and normatively full of content this list gets, the more likely it will lose its generality. On the other hand, if the list is kept extremely formal and abstract in order to guarantee its generality, it will hardly have sufficient content to justify substantial rights like human rights. But how can "human nature" be understood appropriately in the context of human rights?

This leads to the second difficulty attempts to reconsider the relevance of human nature for human rights are exposed to. The notion of human nature itself must be further clarified. However, natural sciences have not only changed our understanding of the human being. Medical and biotechnical interferences as well as the developments in the life- and neuro-sciences make it possible

marion.albers@uni-hamburg.de

to change essential features of the human species. From a naturalistic point of view, human nature itself is subject to transformation and transgression in an unprecedented manner. However, change even of fundamental characteristics or abilities might also be identified as part of human nature. At least, the vanishing line between the natural and the artificial challenges the idea that basic human rights could be "grounded" in certain features of our common human nature. Beyond that, biotechnical developments and especially the possibilities of biotechnically induced human enhancement represent various challenges to particular human rights positions.

Both discussions refer to one another. Without sufficient understanding of the possible status of human nature for human rights and of the role the concept of human nature plays, it must remain unclear what kind of argumentation is appropriate within the human rights discourse. At the same time, a clarification of the idea of human nature is necessary. This must involve the specific discussions on how to describe the human being, on corporality or on biotechnical alterations (to name only a few), because these discussions influence the understanding of human nature as well as the idea of human rights and its possible foundations.

Against this background, the essays in this volume explore the significance of our understanding of human nature for our understanding of human rights. The contributions in the first part of the book – The Role of Nature in Human Rights Discourse: Foundations and Limitations – explore the possibilities and limits of arguments from nature in the context of human rights and focus on the relation between the concept of human nature, normative principles and anthropological arguments. Is it possible and plausible to justify the universal and egalitarian validity claim of human rights by referring to the concept of human nature? Can the concept of human nature provide a basis for the understanding of human rights? Or does the idea of human rights in its modern, post-1945 manifestation essentially go beyond human nature?

Corinna Mieth argues in her chapter "The Double Foundation of Human Rights in Human Nature" that there are two aspects of human dignity that are simultaneously two aspects of human nature. One aspect concerns the normative, moral status of persons that is connected with their ability to act morally. The other aspect concerns the empirical status of persons that is connected with their neediness and vulnerability. It is this second aspect that leads us to determine the substances of human rights: There are some goods that are indispensable for a decent life – and these goods should be protected by human rights. However, the second aspect, Mieth claims, is connected to the first. Hence, human rights are founded in two aspects of human dignity. Mieth develops this idea with a view to the example of extreme poverty as a violation of human dignity and as a violation of human rights.

In his chapter "Human Rights and Human Animals", Bernd Ladwig assumes that whoever seeks to provide justifying reasons for human rights seems to be, in some way or another, committed to universal anthropological claims. Nonetheless, as Ladwig argues, it is clear that anthropology alone cannot provide sufficient grounds for human rights. In addition to an anthropological footing, we also need recourse to at least one valid moral principle. This anthropological approach provides the

marion.albers@uni-hamburg.de

argumentative framework within which we can derive, according to Ladwig, some but not all of the specific contents of human rights.

Thomas Hoffmann argues in his contribution "Human Rights, Human Dignity, and the Human Life Form" that it is possible to formulate a justification of the idea of human rights by referring in a first step to the term of human dignity because statements including 'human dignity' refer anaphorically to generic sentences that articulate the concept of human nature. The concept of human nature is neither a set of elements (i.e. extensions) nor an empirical (e.g. biological) predicate. Rather, the concept of human nature is the form of its exemplars, as Hoffmann says (with reference, inter alia, to Aristotle): It is a life form. But a life form is also the norm that determines what is in general "naturally good" (Ph. Foot) for the individuals which exemplify this life form. If one understands the concept of human nature this way, then one is able to justify human rights by referring to human nature, since now human rights can be characterized as the attempt to secure the possibility of the natural flourishing of human beings in general.

A neo-Aristotelian path is also taken by Harun Tepe in his chapter "Rethinking Human Nature as a Basis for Human Rights". Tepe discusses the well known "capability or capabilities approach" (M. Nussbaum and A. Sen) and what he calls an "ontological anthropological approach" by the Turkish philosophers Takiyettin Mengüşoğlu and Ioanna Kuçuradi. According to Tepe, the systematic knowledge of potentialities and conditions for the actualization of these potentialities of human beings offered by the ontological anthropological approach is the prerequisite for the justification of human rights.

In the chapter "The Relationship Between Human Nature and Human Rights. The Confucian Example" Mateusz Stępień elaborates on the idea of rights as grounded in human nature from within the Confucian tradition. From the observation of a lack of any concept of rights in Confucianism, Stępień analyzes the impact of the particular vision of human nature developed by Mengzi on the "discursive space of Confucianism" and the elements of Mencian theory that determine, first, the lack of recognition of rights, and second, even the existence of the discourse on rights within Confucian philosophical tradition. Just as classic concepts of natural law in the Western tradition do not necessarily develop a concept of (individual and subjective) rights, the Confucian (Mencian) idea of inborn goodness was rather an obstacle for developing a concept of rights in the Middle Kingdom, not its stimulus.

Frederik von Harbou offers a naturalistic account of human rights that refers to scientific facts about human beings but does not imply reductionism. The aim of his chapter, "The Natural Faculty of Empathy as a Basis for Human Rights" is to show why human rights are both conceptually and empirically based on the natural human faculty of empathy. Von Harbou understands human rights as expressing a certain minimal standard of morality that implies an altruistic motivation. Both analytical arguments and neuropsychological findings suggest that original altruistic behaviour may only be explained by compassion, which ultimately requires empathy. Empathy is a natural and cross-culturally developed human faculty.

In his chapter, "Human Rights and Basic Needs" Peter Schaber, on the other hand, argues that core human rights are based in the person's basic entitlement to

marion.albers@uni-hamburg.de

exercise normative authority. According to Schaber, human rights are not grounded in the basic needs of human beings. Rather, both civil liberties and social rights are intended to protect the exercise of this normative authority. Schaber does not claim that the idea of normative authority can ground all or even most human rights, but in his view it is clear that it grounds more human rights than the idea of basic needs.

The objection against the conceptual connection between 'human right' and 'human nature' in Arnd Pollmann's chapter "Human Rights beyond Naturalism" is much stronger. He claims that a plausible human rights approach can and should abstain from any substantial references to human nature. Although philosophical accounts of human rights have to be based on the presupposition of membership in the human species, the idea that human rights are 'natural rights', Pollmann argues, is highly misleading. Pollmann interprets human rights as 'constitutional rights' from the conceptual outset. The subject of human rights is not the pre-political or natural human being but the somehow anticipated, democratically transformed, and also revolutionary subject of his or her own future.

Jörn Reinhardt's contribution, "Human Rights, Human Nature, and the Feasibility Issue" concerns the problem of feasibility. Arguments from nature were not only used to justify fundamental rights. For natural rights thinking, human nature was an instance of critical evaluation as to whether an idea of rights is feasible or not. The different ambitions that are connected with the very idea of rights, especially in the modern natural right tradition, could often be traced back to divergent anthropological assumptions on human dispositions and conduct. In his contribution, Reinhardt's aim is to show how the feasibility requirement applies to fundamental rights. Even though the idea of a "natural right" (in its many variations) and post-1945 human rights are two highly distinct phenomena, a central premise in both discourses is that a concept of rights must be realistic (or rather realizable). Reinhardt explores to what extent arguments from human nature are helpful to deal with the feasibility issue.

The second part of this volume – Species manipulation and the transformation of human nature: Challenges to human rights – addresses the challenges to human rights that result from the transformation of human nature and species manipulations. How do the transformations of human nature change our understanding of human rights and particular basic rights? Which of the possible manipulations of the human body are ethically and legally justifiable? What are the arguments to protect human nature against manipulation? Or should there, in fact, be a human right to attain enhancement and manipulation?

In his chapter, "How to Protect 'Human Nature' – By Human Dignity, Human Rights or with 'Species-Ethics' Argumentations?", Georg Lohmann turns his attention to the current developments of medical genetic engineering that change the methodical attitude towards human nature and also express a change in the evaluation of human nature. Lohmann asks if we could or should protect human nature by human dignity and human rights, or if we need other normative standards. To find an answer he probes the hypothesis that human nature can be protected by human rights and the "untouchability" (Unantastbarkeit) of human dignity. After having discussed arguments brought forward by Jürgen Habermas, Lohman examines three

marion.albers@uni-hamburg.de

normative arguments for the undisposability (Unverfügbarkeit) of human nature and compares Habermas' species-ethical argument for the undisposability of human nature to similar "post-metaphysical" challenges like an intercultural understanding of human dignity as a justified principle of human rights.

Markus Rothhaar's chapter "Species, Potentiality and Their Manipulation" concerns arguments of potentiality and species membership in the ongoing debate regarding the moral status of human embryos. According to Rothhaar, both of these arguments directly point to the relationship between nature and normativity. As such, they are only convincing if one assumes that species membership and developmental potential merely provide criteria rather than the foundational reasons for moral status. In light of this, the chapter examines proposals made by Kant, Fichte, and Spaemann on how to understand the relationship between the reasons for and the criteria of moral status and contrasts these with recent developments in genetics that have made both species membership and embryo potential, to some extent, manipulable.

Ingrid Schneider's chapter, "The Body, the Law, and the Market: Public Policy Implications in a Liberal State", explores the interaction of the law, the market, and public policy in the governance of body parts which are used for medical ends. Schneider lays out the legal and philosophical groundwork by exploring the universal norm of non-commercialization of the human body, as enshrined in legal documents, declarations and professional codes of ethics. She also reconstructs major philosophical arguments regarding the relationship of humans to their bodies, in particular vis-a-vis Kant's philosophy of morals, and analyzes how continental European law deals with the duality of the human body as person and "material thing". After these analyses, she puts these legal and ethical norms, deontological principles and consequentialist reasoning to the test by scrutinizing models and arguments brought forth to justify financial incentives for organ procurement.

In her chapter "Collection of Human Tissue Samples in Biobanks: Challenges to Human Rights and Human Nature" Bianka Dörr turns the attention to the issue of biobanks. In recent years, biobanks have become major strategic and powerful tools for undertaking medical-scientific research. However, the use of human tissue and donor-related data for research and biomedical applications raises important legal and ethical questions. Dörr focuses on the concept of informed consent and discusses it within utilitarian and human rights approaches while exploring its implications for human nature. She argues that a clear commitment to a human rights approach should be adopted, one that values and respects the individual as the sample donor and asks for his/her informed consent in cases where his/her bodily material will be used for current and future research.

Tetsu Sakurai discusses the consequences of a step that is controversial on its own terms: "Should Society Guarantee Individuals the Right to Maintain 'Normal Functioning'?: A Genetic Minimalist Approach in a Globalized World". His chapter focuses on the idea of a "genetic decent minimum", which requires public policy to provide all members of a society with a certain genetic endowment that will enable them to participate in all spheres of life as normal competitors and collaborators. Sakurai considers the moral implications of the development of genetic technology

marion.albers@uni-hamburg.de

in the laboratories of affluent societies in light of the fundamental inequalities that exist on a global scale. He takes up Audrey Chapman's criticism of biocentrism from her egalitarian point of view and examines her prediction that, if expensive genetic enhancement technology is used in rich societies, it will inevitably aggravate the economic gap between the rich and poor countries by creating "doubly-strong competitors."

In the final contribution "Enhancement, Human Nature, and Human Rights", Marion Albers centers on human enhancement and analyzes the consequences enhancement possibilities and activities have on the understanding of human nature and human rights. After analyzing and clarifying the concept of human enhancement by presenting fields and visions as well as conceptual dualities such as "therapy/enhancement", "normality/supranormality" or "naturalness/artificiality", she concludes that enhancement is a complex, inherently reflexive concept. A closer analysis of the enhancement debates shows that human nature, human dignity, identity, autonomy or equality are the origin of oppositional arguments. The problem of enhancement reveals how varied and in need of contextualization these concepts are. The relationship between the concept of human nature on the one hand and human rights on the other has always been complex, and in the present-day human rights discourse "human nature" might be assigned a particular role just because of its ambiguity and rich implications. The enhancement problem can be seen as a catalyst for reflexivity because it sets off new discussions on fundamental questions. It enriches the discourse on human nature and human rights and, in turn, benefits from being part of such a discourse.

This volume began to take shape at a workshop organized at the XXV. IVR World Congress of Philosophy of Law and Social Philosophy in August 2011. The workshop was followed by a Colloquium at Magdeburg University in the conference centre in Schloss Wendgräben in November 2011. During the ensuing period, the contributions of this volume were worked out, discussed and refined. Especially, we would like to thank Erik Kravets, M.A. and Audrey Kravets, J.D. for their help and constructive comments during the editing process.

marion.albers@uni-hamburg.de