4. The Uneasy Balance between Individual Rights and the Necessity of Communities

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The core of this chapter is an analysis of the relationship between the individual and the community in a human rights set up. It is my contention that this relationship has not been grasped adequately and that this inadequacy has wide practical implications, thus contributing to conceptual as well as factual turmoil. According to the analysis, human rights are attached to the individual, implying that the phrases group rights and natural rights are misnomers (section 1). However, rights are social and presuppose groups or communities (section 2). Consequently, there is a built-in tension between the individual, worthy of human rights protection, and the group, which is protector as well as violator of human rights (section 3). Often, human rights are seen in opposition to or together with the state, but as the Universal Declaration states, there are many human-rights-relevant communities, such as the family, society, association and international order (section 4). The relevance and even necessity of the many types of community for human rights are analysed further (section 5), and the points raised are used to analyse aspects of the present security agenda (section 6). The last part offers a conclusion and presents some overall perspectives (section 7).

1 Human Rights Are Individual

The first contention of this chapter is that human rights are individual and that any talk of human rights as collective rights or group right rights is conceptually mistaken, philosophically inconsistent and politically dangerous.

Human rights are simply rights attached to human beings, only to human beings and to all human beings. Zebras, gorillas, pigs and sheep may have rights in the sense that they are legally protected from extinction, maltreatment, etc., but such rights are not human rights. It may even be disputed whether it is appropriate at all to use the term ‘rights’ in relation to the legal protection of animals, as the animals themselves can never claim their rights, especially not towards other animals, but this is not at issue here. The point is that among animals and any other creatures, only humans can have human rights. But a corollary of this is that all human beings

have human rights as part of the very definition of those rights. Human rights are not dependent on any group affiliation, such as nationality, geographical location, religious belief, etc. (frequent denominators of various legal systems), nor on other distinctions such as income, colour, etc. This feature distinguishes human rights from other commonly occurring types of rights, such as rights attached to mainly territorially defined national legal systems, religious law and even international public law.

Human rights are only dependent on one affiliation, namely the affiliation to a natural species: homo sapiens. It is in this way – and only in this way – that human rights can be said to be natural, in the sense that this type of right is attached to the natural species. By contrast, human rights are not natural in the sense that rights emerge directly from nature, in the way that natural-law philosophers claim. Human rights are not a natural fact; human beings are, and this natural fact defines the group which are the objects of those rights.

Thus, human rights represent liberation from any socially defined status, including nationality. This is spelled out in Article 2 (1) of the Universal Declaration: ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ Human rights are only dependent on the natural status of being a human being.

In this way, human rights are truly universal, as is claimed in the title of the 1948 Declaration. Even though universality is also a feature of many other legal systems – indeed, the constitutional nation state could not function without rights being applied universally – universality within a nation state is somewhat limited and incomplete, as indicated in the 1789 French Declaration, which is not for humans as such but limited to French citizens, thus representing a local universality and consequently not being truly universal. In this way, post-Second World War international human rights are more truly human rights, more real in the Hegelian sense.

This approach also places the emphasis on gender as an important element of human-rights analysis, the two sexes being naturally grounded categories. Just as human individuals are natural facts, it is a fact that humans are divided into two natural subgroups: female and male. This leaves human rights with an inherent

1 Whether rights are attached to the genus homo (thus including e.g. homo neanderthalensis), to the subgroup homo sapiens (thus including homo sapiens idaltu) or limited to homo sapiens is an interesting question, but presently without practical implications, as other species and subspecies are extinct. At any rate, ‘rights’ presupposes a species mastering complicated language and complex concepts.

2 ‘Déclaration des droits de l’homme et du citoyen,’ i.e. of the rights of man-and-citizen.

3 In Hegelian terms, one could say that human rights have left the natural-rights state-attached level and become abstract, universal human rights for all. However, this is only the antithesis, as their implementation, the konkrete Freiheit, is yet to be obtained at the global level.

4 The boundary is not impassable and some individuals are born with equivocal sexual characteristics. Still, the vast majority of humans are born with a clear sex which is a definite either/or, not a continuum.