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Universality of human rights: A perspective from the presumed "essence" of human rights

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ABSTRACT

This paper is a Chapter from the author's latest book entitled "On the European Court of Human Rights: An Insider's Retrospective (1998 – 2019), Eleven Publishing, 2019. The work is an attempt at a critical understanding of the spirit of the European Convention on Human Rights (ECHR) as implemented, vel non, by the European Court of Human Rights in Strasbourg (ECtHR) – starting with the appointment of the "new Court" in 1998 and up to 2016. The Court, which had begun to function in 1959, has been ever since at the intersection of the two great Western legal traditions. Lately, it has been established by historians that both the Convention and the Court were the result of the American political initiative (and surreptitious financing)—in response no doubt to the Nazi and Fascist cruelties during World War II, and probably in order to construct a semblance of the European Supreme Court.

In this perspective, "human rights" are the procedural safety valve, a conduit to the international jurisdiction supposedly capable of resolving authoritatively what could not have been resolved domestically. It is illusory to search in this context for the "essence" of human rights since here "human rights" is practically everything that could not have been properly adjudicated at the domestic level.

Introduction

In a system where justice cannot be obtained speedily, where delays run for more than a decade, the aggrieved person although patiently awaiting justice, will in fact be the victim of the other party to the controversy. This other party, having profited from its illegal behavior, will of course be glad that the system doesn't work. In turn, if this dysfunctionality is generalized, it will tend towards all kinds of impunity. This will end in Hobbes' war of everybody against everybody, *i.e.*, the anarchy. Here we should keep in mind the question of *shared values* because, inasmuch as the values are actually shared, they do represent the underlying logical premise on the basis of which the controversies may be averted before, in the formal legal procedural context, they ever arise.

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domestically. It is illusory to search in this context for the "essence" of human rights since here "human rights" is practically everything that could not have been properly adjudicated at the domestic level.

Results and Discussion

1. Justice and Legal Formalism

At the core of the problem we find a realization concerning the relationship between the complexities of justice, *i.e.*, the just and logical resolution of conflicts on the one hand – and formal justice on the other hand. Formal justice may very well be in accord with substantive justice, which in turn would mean that the decisional outcome in a particular case is both formally and substantively satisfactory. Very often this is indeed so. There are, however, many situations in which what is ethical in terms of substantive justice departs from formal justice and vice versa. If formal justice contradicts an equitable outcome in the adversary scenario, the decision-maker–the judge will be confronted with a dilemma. He may decide formally disregarding the unjust outcome, or he may decide in accordance with the substantive justice and risk to be reversed on appeal—where the story may very well be repeated. The existence of the above dilemma, however, may, and this is the essence of the disease, never surface in the conscience of the formalist judge: he simply is not aware sufficiently of the substantive aspect of the case and he instinctively sides with the authority and the form of the major premise that he had been coached to observe.

Incidentally, this attitude has much to do with the judge's attitude vis-à vis authority. It has been shown abundantly that there are, in this respect, two kinds of judges. On the one side we have judges who are anti-authoritarian psychologically and on the other side, psychologically, we have judges who instinctively side with authority. Psychological studies have been made of the judges of the US Supreme Court in which it has been demonstrated how their attitude vis-à-vis authority predetermines the outcomes in particular cases. We observe, similarly, the radical difference in the attitudes in the European Court of Human Rights (hereinafter ECtHR) where, typically, judges appointed by conservative governments tend towards positivism and formalism, preferring in their decision-making the syllogistic-formal conformity—to substantive justice.

In the ECtHR, the inner dynamic within the Court distinguishes between judges who are anti-authoritarian, which are called "violationists", as opposed to judges who habitually side with formalistic outcomes. Such judges are perceived as"non-violationists". This is all the more absurd because the ECtHR finds itself between the two systems and because the very origins of the ECtHR, historically and functionally, point towards an anti-authoritarian attitude. After all, the defendant in the ECtHR is always one of the contracting *states* and the plaintiff is always one who battles against the authority of his particular state. The very purpose of the establishment of the ECtHR was to create an authority that is not going to be authoritarian, *i.e.*, that will be capable of correcting injustices occurring within the domestic legal systems.

Politically and historically the inception of the ECtHR was an anti-authoritarian reaction to the injustices perpetrated by the authoritarian systems during and after World War II. The fathers of the European Convention on Human Rights were exponents, this has now been shown, of the American establishment in the 1940s and 50s that was apprehensive about the resurgence of the authoritarian attitudes on the European continent.

The convention and the court were supposed to be the bulwark against these authoritarian attitudes so clearly perceived in their horrendous anomalies during World War II. In addition, the authoritarian communist systems in the Soviet empire, too, were perceived by the Common Law civilization as inherently undemocratic and incapable of the true and sincere government by the rule of law.

It is thus absurd to observe how this same authoritarian legal formalism, *i.e.*, obsessive–compulsive adherence to the positivist major premises as still the dominant attitude in the ECtHR. Of course, this will not always be evident if one were to read the judgments and the decisions of the ECtHR because the written products of the court of course hide the reality of deliberations—as it is more or less true in every court except in so far as the dissenting opinions of certain judges demonstrate the reality behind the formal decision of the court.

There can be no doubt about the fact that the ECHR had been attempted in international law to suffuse the Continental legal system with elements of the Common Law. If one looks, for example, at the phrase "the fair trial" – one must be aware of the simple fact that this idiom before World War II did not even exist in the Continental system. Purely linguistically, the significance of the phrase concerning the fair trial is even today entirely different from the meaning of the same phrase at Common Law. If one says: *"This trial was not fair…"* in one of the Common Law countries this carries a certain meaning; if the same phrase is used in one of the Continental countries, it will be most likely considered a joke. The reason for this cynical attitude, indeed, is to be traced back to the centuries of authoritarian–judicial decision-making where the last thing one was to expect from the judiciary was—justice.

One could go even further and maintain that in many of the Continental legal systems the reference to "justice" would seem to be a clear sign of naïveté on the part of the person pronouncing the word. The caseload of 140.000 pending cases in the ECtHR is a foremost testimony of the disrespect and the distrust of the domestic judiciary in most Continental countries and especially, of course, in countries that have only recently reemerged from the Soviet Communist system. In other words, there is indeed an intimate link between the rule of law on the one hand and the tradition of democracy on the other hand.

2. What are Human Rights?

Hopefully, what we have indicated will make it clear that "human rights" is a complex cross-cultural phenomenon and that there can be no single meaning to the idiom. Human rights are also

a combat zone of two legal cultures. The confrontation between the two legal systems may be observed in many a case as deliberated upon in Chambers and in the Grand Chamber of the ECtHR. One might say that these deliberations are what Roscoe Pound would have called "comparative law in action". Naturally, because there are only three Common Law countries (the United Kingdom, Ireland, Malta and Cyprus) that function in the context of 43 other countries –, their voice is not heard as it ought to be in a system, which is at least in two respects the progeny of the common law. *First*, the very idea of having a virtually new legal system based on precedents is something unheard of in any of the Continental countries at least until recently, *i.e.*, in so far as the constitutional courts in many countries ranging from Slovenia to Turkey function on the basis of the law of precedents.

One is reminded of the way the problem of justice is treated in the literature of particular cultures. Kafka"s Trial, for example, is not an existential imaginary representation; in real terms it is an explanation of the absurdities of the inquisitorial trial that never had anything to do with what that at Common Law would have been called a "fair trial". Likewise, Balzac's descriptions of the functioning of the French legal system are not mere literature; they are descriptions of the attitudes one still encounters in the French legal culture. Camus, too, in his novel entitled "Stranger" forces one to acknowledge the absurdities of "justice" as exercised by the Continental judiciary. *Second*, the spirit of the Convention, as we have amply demonstrated, stems from the Anglo-Saxon culture both for post- World War II ideological, political and specifically legal reasons (in reference specially to articles 5 and 6 of the Convention).

Far more complex than this is then the question whether human rights as a 20th-century phenomenon of international legal level are, or are not, belonging, in their origin to one of the two Western legal systems: whether human rights in their origin are or are not in a deeper sense "democratic". As we have pointed out the plaintiff in the ECtHR is always an individual, except for the very rare interstate cases –, whereas the defendant is always one of the 47 states. In this respect, even in view of the relatively recent history it is virtually unheard of for any of the member states that the very seat of authority, the state, would become a simple defendant confronting a simple citizen. One must admit that this is, although we have got used to it and have forgotten how revolutionary it is, in itself surprising.

Human rights are, therefore, by definition an anti-authoritarian phenomenon because in the ECtHR every untoward action of the authoritarian state, from Turkey and Russia the one hand to Ukraine and the many on the other, is subject to scrutiny in view of the substantive and procedural provisions of the ECHR.

In fact, the above scrutiny is what as a legal process human rights are all about. The case law of the ECtHR is the record of violations by and only by the states of the individual rights of individual plaintiffs. It would therefore seem obvious that "human rights" as they appear on the record on the ECtHR are, empirically speaking, those individual entitlements that are liable to be violated by the states.

If we turn this around, we see that human rights are by definition something that cannot be infringed upon by another individual or group of individuals. Only the organized state with its implements of power may be guilty of such violations. In turn this implies that human rights are by definition something that is liable to be victimized by the state. Take for example Article 2 of the ECHR proscribing murder. If one's life is taken away by another individual this does not violate his or her human rights (unless of course the state is negligent in investigating the criminal event of which the loss of life is a consequence). But this very loss of life becomes a question of human rights only when the state in question is implicated in the case at least procedurally, which from the victim"s point of view is not logical. The victim's human rights, his or her right to life, would have been violated irrespective of who would be the perpetrator of the murder. The Court has dealt with many Turkish cases involving the Kurds were the victims have been killed or have disappeared and since this was the liability of the Turkish state these were *stricto sensu* violations of human rights.

3. Rights and Remedies in their Procedural Context

On the other hand, rights in general are a procedural phenomenon in which the so-called "access to court" would seem to be of essence. Preliminarily, access to court obviously means that the state is obliged to offer a forum in which the alleged right could be litigated. However, before we touch on this question let us first explore what we mean by the word "right". In the Continental legal tradition, every right is defined again by seeking its "essence", which is misleading, as an entitlement, *i.e.*, independently of its procedural context. By contrast, in the Anglo-Saxon legal tradition the right is inseparable from the same procedural context in which it is claimed. The right as an entitlement must refer to the elusive quintessence of what it is supposed to mean. Take for example the right to property such as it is also included, albeit as a "possession", in the Protocol no. I, Article 1, paragraph 1 of the ECHR. In Roman law the right to property is defined as an absolute *ius utendi et abutendi re sua*. Likewise, the French Code civil defines the right of property as the most absolute right to enjoy and to dispose in so far this as might not be contrary to the rules and regulations.

These two definitions would seem clear enough, yet they disregard the simple fact that a right concerning property becomes active only when its exclusive nature is trampled upon by some other person. As long as the possessions of the property owner are not interfered with, the above splendid definitions may have a pedagogical value –, but they do not actually explain the true nature of property as an entitlement. The latter comes into play only when possession and property are disturbed, which in turn implies that an action must be filed in the court of law and this, of course, entails that the whole procedural context of claiming the remedy for the disturbance goes into action.

To put it differently, the "right" of property is completely irrelevant as long as it is not interfered with, *i.e.*, as long as the procedural question of the remedy does not come into play. Thus empirically speaking most of property in a particular society never necessitates a recurrence to its definition; the explanatory value of these definitions is completely irrelevant as long as there is no action in Court concerning the disturbance of the right. It would

therefore seem, at the very least, that the right is an entitlement doesn't mean very much without the procedure and without the remedy in case they are needed – in a court of law.

The right and the remedy are the two sides of the same coin. The right that does not have the remedy, *i.e.*, a *restitutio in integrum* or some kind of damages, is a mere definition without practical value. Article 13 of the ECHR, for example, mandates that the domestic law must offer a procedure in which such remedies can be claimed. This implies that there must be a procedure in which the remedy is claimed, which in turn signifies that the procedure of claiming this remedy is, if anything is, the "essence" of this right.

Another example of this may be derived from criminal law. Most Continental scholars will examine the substantive definition of a particular offense as containing the meaning pertaining to this piece of the proscribed behavior. The point of defining the elements of a particular crime, the so-called *corpus delicti*, however, is not in its ontological definition that might have some explanatory value. This we take seriously only if we conceive of an offense as a *reified* phenomenon in the sense that murders, arsons, thefts etc. actually exist.

Indeed, this is prevalent in the Continental legal tradition where they forget that the point of defining the crime is the procedural definition of the burden of proof of the prosecutor. Unless the prosecutor persuades the court or the jury beyond reasonable doubt that all elements as defined by the definition of the offense—this is the true meaning of the presumption of innocence consistently misunderstood in the case law of the ECtHR—the defendant cannot be convicted. It follows logically that the point of the definition of a particular offense cannot be in some static sense "explanatory" and a subject matter only of substantive criminal law. The point of the definition is heuristic in the sense that it is procedural. It comes into play only when a person is suspected of having committed an offense. This presupposes an accusation, an act of indictment that in turn describes exhaustively the burden of proof on the part of the accuser.

4. "Essence" of a crime

We come to the simple conclusion that the "essence" of a crime is completely irrelevant unless perceived in the context of the accusation, in which the accuser carries the exhaustive burden of proof. The crime of murder, in other words, is irrelevant unless there is an enforcement of the underlying definition. Here we are again reminded of the case of Streletz, Krenz and Kessler v. Germany where for many decades the definition of murder lay dormant in the German Democratic Republic in as much as the killings of those who attempted to cross to Western Germany not only remained unpunished, i.e., on the contrary the perpetrators of these acts of murder were consistently awarded.

The German philosopher Friedrich Hegel, in his "Philosophy of Right", maintains explicitly—of course from the philosophical but nevertheless pertinent point of view—that a norm which has not been enforced ceases to be a norm; we are here also reminded of Immanuel Kant maintaining that a murder on the lonely island would have to be punished although these would be the last people to survive. It may seem irreverent to maintain that these are unnecessary philosophical impediments, but it is true that these philosophers, too, failed to separate the substantive question of the incriminating norm, here murder, from the practical procedural context. Above, we have maintained that the right to property is irrelevant unless it is violated and unless a legal action is taken to remedy the situation. It is similar in the criminal law where the norm must be violated and the violator must be pursued in law in order for the norm to begin to live.

It may sound dialectical to maintain that a norm must be violated in order for it to come to life. But "dialectical" is too strong a word to describe the purpose of most legal norms if all we are saying is simply that every norm is conceived for the hypothetical situation in which it would be violated. If we turn this glove inside out, we come to the unsurprising conclusion that a norm lays dormant and thus remains irrelevant in the situation in which there is no chance that it would be violated. Imagine the two extreme normative propositions of which one is: "Thou shalt breathe!" and the other one is to the contrary: "Thou shalt not breathe!" We immediately observe that both of these normative propositions are completely meaningless. Yet they are both situated on a continuum of some kind, i.e., between redundancy and the impossibility. I daresay, nevertheless, that all norms in any legal system are situated in some sense between these two extremes. Cannibalism, for example, is not even incriminated in most Western jurisdictions because it is so unlikely and Nietzsche maintained in his "Genealogy of Morals" that proscriptions in the particular culture, I think he was referring to the Roman society, tell us something about the actual goings-on. If I remember correctly, Nietzsche was referring to the Roman proscription of drinking wine and he maintained that the custom of kissing in the circle of a family was there in order to check on family members. While this is probably not true it is difficult to escape the simple conclusion that a norm is there only because it is necessary in the sense that it is likely to be violated. On the other hand, the norm that is unlikely to be violated, like cannibalism, it is unlikely to be part of the legal order in the first place.

The categorical imperative to the effect that we must breathe is in this sense not only redundant but completely meaningless. In the other extreme we have the Roman law formula "Ultra posse nemo tenetur…", which in private law means that nobody may be responsible for consequences which are beyond his control.

But the formula also applies generally and it simply means it doesn't make any sense to impose requirements that cannot possibly be obeyed. The old maxim that the wise King will only command behaviors, which are likely to be obeyed, makes sense only between the extreme of redundancy and impossibility. The above description of the spectrum between the redundant and the impossible norm was meant to demonstrate the intimate connection between the norm and the potential controversy it is supposed to address. In situations where, due to the above redundancy or impossibility, the controversy is unlikely to arise there is no place for normative regulation. The law is only geared towards the resolution of conflicts- The misunderstanding derives from the separation of the seemingly ethical substantive questions from their practical procedural context. Law is not an ethical device. Law only goes into action when the norm is allegedly

violated and when there is, as they call it in the ECtHR, an "arguable claim", or, as it was called in Roman law, legitimatio and causam, a standing based on the prima facie evidence that the claim is not manifestly unfounded. All these misunderstandings derive from the simple fact that the ethical search for the substance and the meaning of the norm is performed somehow "transcendentally" and disregarding the eminently pragmatic function of the law, which comes into action only if there is a procedurally articulated claim to a particular right. It is in this context that it cannot be overemphasized that any right whatsoever is simply the mirror image of its remedy. Where there is no remedy and no procedure, there is no right.

5. Application of these rules to "human rights"?

As an aside to this we should consider the situation of the ECtHR, which finds itself situated on the international level and has no means of enforcement of its decisions. Thus, the Court cannot command what is unlikely to be obeyed, the typical example of this being the *Lautsi v. Italy* judgment. In this Chamber judgment, the Court found the violation concerning the cross hanging in every Italian schoolroom. From an American constitutional point of view this made sense given the case-law of the American Supreme Court, where the court found a constitutional violation –, in the case where nativity scene, in some small town upstate New York was erected in front of the mayor's office, given that the nativity scene was paid by the local taxpayers money.

6. Human Rights in Their "Essence"

The essence of human rights derives from the access to some *forum* that will adjudicate a claim concerning the alleged violation. This sounds very refined, but as a matter of fact it is true of every right. A right which is merely "on the books" does not mean anything unless it is capable of engaging the forum, some kind of a referee or a court that will upon the claim of the plaintiff, accept the responsibility of adjudicating. The contentions of the plaintiff must be based on the normative construct that is "on the books" substantively –, but this is only the beginning of a process in which, as we have pointed out above, the substantive right comes to life procedurally. Imagine furthermore a situation, in which substantive rights are not even defined and there can be no reference to any description of the plaintiff's entitlement. In such a situation we can still speak of a "right" no matter how vague the plaintiff's reference to the injustice he had allegedly suffered may be.

The court will in such a situation probably find, perhaps only on logical and ethical grounds, that an injustice has been committed vis-à-vis the plaintiff. In other words, the court will, even where there is no substantive reference to a right, probably find a "violation". Such a finding would then become a precedent and in the next similar case the next complainant would already be able to assert a right in its substantive formulation that has not hitherto even existed. This is how the rights came about in the history of law because at its inception there certainly did not exist a code the litigant could refer to.

Imagine now the reverse situation in which the most sophisticated panoply of rights is designated in some substantive and complex piece of legislation, but where there is no forum in front of which those aggrieved, convinced that their rights had been violated, could assert them. These kinds of "rights" are meaningless.

Again, if this does not seem to be a realistic example, consider the fact that in most Communist countries all the rights were substantively "on the books", yet the forum a in front of which these rights ought to be ascertainable, did not function in their natural way. Consequently, the rule of law in these countries most often did not amount to a real protection of individual entitlements.

This is just a different way of saying that these rights did not exist. This demonstrates that indeed any right, and not just any "human right", depends on the practical possibility to assert it in front of a court or any other forum that will consider the aggrieved person's claim earnestly and would be ready to establish, whether he or she had indeed suffered an injustice. Procedure without substantive rights may exist, but that substantive rights without the procedure – cannot exist.

Conclusion

In terms of the previously sketched argument concerning the relationship between what is primary and procedural and what is historically secondary, and "substantive" –, let us now address in its plain form the question of justice to be considered in its procedural context. If the objections were raised to the effect that the difference between what is just and what is unjust is always a matter of explicit and pre-existent substantive criteria, even the philosophers beginning with Aristotle have always treated it like that, my answer would be procedural and, in this sense realistic.

A constitutional court that came into being recently, for example, will start its own accretion of the case law purely procedurally. It begins literally, as far the substantive criteria are concerned, with a *tabula rasa*. For five years I was a judge in such a Constitutional court and I speak with some experience of the state of affairs in which there is the scanty text of the Constitution and nothing else in terms of substantive criteria.

All courts, and especially those of last resort, function according to the McDougal formula, *i.e.*, that consistency with case law or even with the positive norm is a second-order consideration while at the same time, of course, the end product of this process of discernment, the written judgments, are peppered, in order to give them legitimacy, with all kinds of references to all varieties of authorities.

This does not mean, however, the judges themselves are fully cognizant of the way they arrive at their conclusions. One remembers Bishop Berkeley and his distinction between the way a particular decision is arrived at – and the way that same decision is *ex post facto* rationalized.

When one reads the decisions of the United States Supreme Court, where the judges themselves write the judgments, one soon detects these *ex post facto* attempts at justification of the position

taken in the judgment. It is thus interesting to note that the judges of the ECtHR, when they are sworn in, must solemnity declare never to divulge the substance of deliberations, during which the judgments in their final form were arrived at.

The extreme example of this "acoustic separation" is probably the United States Supreme Court. It considers all kinds of "policies" as the criteria for its decision-making, while pretending otherwise. This is unquestionably an anomaly. But even this incongruity is understandable when consideration is given to the fact that every one of the judgments issued by them is in real life a piece of legislation binding not only on all of the federal courts but also, if the judgment touches upon the "fundamental question" according to the Fourteenth Amendment, on all of the state courts. We might add that in the age-old debate in the United States as to whether the courts create or merely discover the law, the "discovery of the law" is the idiom hiding the truth of the matter.

Think again of the *Lex Rhodia de iactu*. Did the judge in that case, with which he fashioned an everlasting precedent, "discover" the law or did he create it? We would opt for the "discovery" because the situation, such as presented itself to him, logically necessitated the solution that he "merely discovered". The solution to the problem he discovered was elegant and "logical" in the sense that he intelligently resolved the controversy. If he was a legal formalist–positivist he would have conservatively stuck to some pre-existing precedent or norm and he would have sent away the aggrieved plaintiffs by mechanical reference to the pre-existent norm or precedent.

Conversely, what are we really saying if we are to maintain that he "discovered" the law — somehow logically implied in the situation as such?

Here we would like to refer to a seminal essay by the English philosopher Barry Stroud dealing with what he calls "logical necessity". As an analytical philosopher Stroud maintains, which furthermore is very interesting in terms of evidence law, that there are situations—he does not specifically refer to legal process—in which one can "logically compel one's adversary to admit that his position is untenable. Attention must be drawn to the fact that "logical compulsion" in the adversary process leads to justice in as much as any just resolution of the conflict must above all be logical. *Lex Rhodia de iactu* was in this sense an eminently logical solution.

As I mentioned above, there can be no "universality of human rights" as proposed by Thomas M. Frank of New York University. He advocates the substantive view of the minimal moral standards that should globally inform the question as to what are human rights. Such a substantive view inescapably becomes an ideological position which, moreover, cannot be consistent since different cultures appreciate differently as to what is essential for the dignity of human existence.

On the other hand, if we take the position that an access to a forum that will adjudicate the controversy is an essential element of human rights, in that case the other element of this must be simply the logic underlying the resolution of the controversy. If this implies that injustice is tantamount to something illogical and that justice is tantamount to the logical resolution of this illogicality, well then this is the position we are explicitly defending.

As to substantive universality of human or any other kind of right, we think this is a position very difficult to defend; on the other hand, it is easy to maintain that two and two makes four whether in China or elsewhere on this planet Earth.

Finally, In the light of what we had explained here, "human rights" are the procedural safety valve, a conduit to the international jurisdiction supposedly capable of resolving authoritatively what could not have been resolved domestically. It is illusory to search in this context for the "essence" of human rights since here "human rights" is practically everything that could not have been properly adjudicated at the domestic level.

References

[1] Barry S (2000) *Wittgenstein and Logical Necessity*, in Meaning, Understanding and Practice, Oxford University Press, 1-17.

[2] Dan Cohen M (1984) *Decision Rules and Conduct Rules: On Acoustic Separation in Criminal Law*, 97 Harvard Law Review 625-627.

[3] Frank Thomas M (2001) *Are Human Rights Universal?* 80 Foreign Affairs, 191-294.