

# Philosophical Theories of Human Rights

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# Habermas on Human Rights

List of Habermas' writings on human rights:

- Human Rights and Popular Sovereignty: The Liberal and Republican Version, *Ratio Juris*, vol.7, March 1994
- Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight, in Bohman, *Perpetual Peace*, 1997
- Remarks on Legitimation through Human Rights, *The Modern Schoolman*, LXXV, Jan.1998
- The Concept of Human Dignity and the Realistic Utopia of Human Rights, *Metaphilosophy*, 2010

# Habermas' Political Conception of Human Rights

Habermas' starting definition:

The concept of human rights «does not have its origin in morality, but rather bears the imprint of the modern concept of individual liberties, hence of a specifically juridical concept»

this does not mean that they are only positive legal rights, since:

1) their «mode of validity» is as universal moral norms

2)but their mode of functioning/their structure is as a positive coercive legal order.

# Habermas' co-originality thesis

- Human rights are Janus faced:



they show moral universal validity

and

they assume the form of positive laws

Question: what is Habermas' view of the validity of law?

# Habermas' co-originality thesis

Habermas Justificatory Strategy:

Reconstruction of the legitimacy of modern constitutionalism

Thesis: Popular Sovereignty and Human Rights are Co-original Notions

# Habermas' co-originality thesis

Popular sovereignty: «...members of a democratic community are governed by themselves collectively»

Human rights: «...they are governed by law and not by men»

J.Habermas, Ratio Juris, 1994, p.1

# Habermas' co-originality thesis

What does it mean?

a) Liberals/liberal democracies:

priority of human rights over popular sovereignty

a) Republicans/radical democrats:

priority of popular sovereignty over human rights

# Habermas' co-originality thesis

a) Republican liberties are positive liberties

TO POLITICAL PARTICIPATION/CIVIC  
ORGANIZATION

(Rousseau's model)

b) Liberal liberties are negative liberties

NOT TO BE INTERFERED (tyranny of the majority,  
Kant's model)



# Habermas' co-originality thesis

In both cases, popular sovereignty and human rights compete with each, they don't complement!

The result is that liberals cannot provide an account of autonomy as sovereign citizenry (since human rights are prior)

and

republicans cannot account for the universality of human rights (since collective affiliation is prior)

# Habermas' co-originality thesis

Habermas:

«Neither of these two responses satisfies our normative intuition that human rights and popular sovereignty are not only interwoven, but of equal importance and even of the same origin» (p.2)

# Habermas' co-originality thesis

- ...On the way to solve the riddle:

Rousseau: the «general will» incorporates human rights as «a mode of popular sovereignty» (p.11)

This allows to exclude:

-non-generalizable interests but granting legal equality of all affected participants

# Habermas' co-originality thesis

- «...a norm lies equally in the interest of all has the sense of rational acceptability...but this is proved only through the procedures for a discursive process of opinion-and will-formation» (p.12)

# Habermas' co-originality thesis

Habermas's account for the validity of law is «post-metaphysical»

Contrast a) metaphysical explanations – religious grounding of law

with

b) post-metaphysical explanations – moral autonomy plus positive law (legitimate procedure of law production)

# Habermas' co-originality thesis

For Habermas positive human rights are «no longer constraints, but enabling conditions for the exercise of popular sovereignty» (p.13)

«private and public autonomy are co-original and of equal weight»

# Habermas' co-originality thesis

## Co-originality thesis

There is an internal connection - mutual presupposition  
- between

human rights as negative liberal rights (freedoms of the moderns) and human rights as positive freedoms/popular sovereignty (freedoms of the ancients).

# Habermas' co-originality thesis

Human rights as negative protections of private liberty must be presupposed to the idea of a legal institutionalization of the practice of self-determination (popular sovereignty/democracy).

This is Habermas's complete system of rights!

Yet: its ultimate justification requires a further step upward...



# Habermas' co-originality thesis

## LOGICAL GENESIS OF HUMAN RIGHTS

➤ Discourse principle D':

«just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses»

-post-conventional principle

-requirement of impartiality

# Habermas' co-originality thesis

➤ The complete system of rights as generated by the discourse principle has the following categories of rights as an outcome. These categories exhaust the division between positive/liberty of the ancients and negative liberties/liberty of the moderns

- 1) Equal individual liberties
- 2) rights of political membership
- 3) rights of equal protection under law
- 4) rights to equal political participation (as legal institutionalization of democratic principle)
- 5) Social and economic rights for the exercise of categories 1-4

# Habermas' co-originality thesis

NB:

these are categories of rights falling either in the already mentioned category of (negative) human rights or in the category of (positive) democracy/sovereignty principle.

The specific content of these rights is left to the democratic dynamics of citizens to decide!

# Habermas on Human Dignity

- In “The concept of human dignity and the realistic utopia of human rights” complete version in C.Corradetti (Ed.), *Phil.Dimensions of Human Rights*, Springer 2012
- How does this change the justificatory framework?

# Habermas on Human Dignity

Thesis:

Human Rights are older codifications than Human Dignity, but this notion was implicit...

In what sense?

Human rights have always concerned violations of a moral worthiness etc.

# Habermas on Human Dignity

The genealogy of “dignity” goes from the multiplicity of different social/corporative dignities linked to honor etc. to the recognition of a universal equal dignity as moral worthiness (particularly with Kant).

# Habermas on Human Dignity

- Human Dignity

becomes “a moral ‘source’ from which all of the basic rights derive their meaning” (p.466)

“The euristic function of human dignity is the key to the logical interconnections between these four categories of rights” [economic, social, cultural, civil and political rights] (p.468)

“Human dignity grounds the indivisibility of all categories of human rights” (p.468)

# Habermas on Human Dignity

The co-originality thesis needs a unifying principle.

This is my principle on «equal communicative freedoms»