

THE IDEA OF HUMAN RIGHTS ACCORDING TO LESZEK KOLAKOWSKI. PROLEGOMENA

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Purpose: The subject of the publication is a philosophical reflection on the idea that organizes the space of human and citizen life, of which we are contemporary beneficiaries. This idea today inspires the search for the subjective status of man, shapes the axiological system of societies, defines the duties of the human person, sets legal standards.

Methodology: The publication is theoretical in nature. The analysis of the literature on the subject constituted the method of working on the publication. This method made it possible to learn about the current state of knowledge in the subject under discussion, indicated the scope of consideration of the problem, and also determined the perspective of further issues and questions that require answers.

Findings: The publication discusses the values on which the idea of human rights is based, the assumption being that a person who transcends the characteristics of the zoological species participates in the moral and rational sphere, the sphere of unconditional moral imperatives that cannot be empirically determined.

Social consequences: The perspective adopted in the publication discussing the idea of human rights is, first of all, important criteria and categories for the construction of the normative order, it projects the formation of social ties and the evolution of values that consolidate society. The idea of human rights in this sense is a regulator of collective life that creates social order.

Originality: The publication asks what are the sources of the idea of human rights, whether the rooting of man in intellectual loyalty to reason is a sufficient motive to safeguard against the desire to invalidate them, whether man as a moral being is immune to the action of the instincts of his own nature.

Keywords: human rights, human being, freedom, humanity, subjectivity, dignity.

Category of the paper: conceptual paper, viewpoint.

Introduction

All people are born free and equal in terms of their dignity and their rights. They are endowed with reason and conscience and should act towards others in a spirit of brotherhood. This is the first article of the Universal Declaration of Human Rights. The content of this article reveals the meaning and character of European culture, which has always been searching for its identity in the unending desire to recognize the principles of human functioning in the world as a self-targeted value, so as to transcend with the shape of its existence the limits of transcendence, and therefore beyond the limits of empirical reality: "there is nothing of which empirical reality is an image: it is itself and has no latent meaning" (Kolakowski, 2000, p. 193). The cultural code of the European area is unconditional moral imperatives and a system of abstract values conditioning, as a consequence, its potential and creativity realized, among other things, in systemic or institutional solutions. Precisely the essence of human rights is supported by this cultural code and can be understood as an ongoing discovery of the moral status of human beings: in what "way" a person becomes a human being. Awareness of one's own separateness, transcending the reified nature marks the path of man's search and realization, for it represents a move beyond physical adaptation to the conditions of the environment and submission to its conditions, towards self-improvement, causation, the achievement of freedom and subjectivity. The two most important dimensions for finding the essence of the problem are reason and transcendence. Oscillating between the categories reveals not only the path to morality as a formal set of norms and laws, but also the path to the humanity of the human being as an abstract value. Europe from this perspective has always been a path rather than a solution, an idea rather than a system of practical solutions, an idea because its strength is and has been the unflagging vitality of the temptation to discover the unconditionally obliging conditions of being that is human.

Sources of the idea of human rights

A life free from violence is a human right argues Amnesty International, formulating one of the basic needs to which every human being is entitled, and situating this need in terms of a code of moral values, a code that is recognized and universally respected, which we are accustomed to think of as its content is inalienable and inevitable and almost guaranteed, and in the popular consciousness functions as the idea of human rights. What, then, is the idea of human rights, can this idea have a universal dimension, are there collective human rights, what are the causes of violations of human rights, what is their genesis, why do certain rights have the status of human rights. These are questions to which answers are still being sought,

to the greater extent that the scale of violence, cruelty and oppression and injustice continues to become a tragic experience for millions of people worldwide. Human rights violations are a fact, statistics expose the scale of the phenomenon, concrete people become victims of violence every day, and especially then this abstract idea, the idea of human rights takes on a very practical meaning. At the very least, this idea is not needed, after all, to be aware of the numerous violations committed in this matter, it is not needed as a source of knowledge, even if only statistically, about the numbers of victims of violence, or it is not necessary simply to know that bad and undignified things are happening. However, it is absolutely necessary as a motive for enabling and conditioning an understanding of who man is as an individual/human being and man as a member of a complex social configuration, it is certainly useful as a justification for taking effective action to prevent violence, and as a blueprint for establishing standards for such action. The sum of these factors adds up to a mechanism that has been built into the structure of the reality of the Western world for several decades, and feeds the tendency to universalize these structures beyond its geographical and mental boundaries. For human rights and their "self-evident" nature are local in scope, confined to the Western world, observance of them in this part of the world is standard, a universal norm, the existence of which remains almost imperceptible and almost natural, in contrast to vast areas of the world where the level of security of rights and fundamental freedoms is not only programmatically violated, not only systemically negated and invalidated, but more than that, it simply does not exist in human, social and state consciousness, that is, it does not exist in the organizational or linguistic climate of these communities. Thus, the concept or notion of human rights is a way of thinking about human subjectivity that honors such a vision of entitlements that justifies both taking actions and creating procedures that will limit obvious violations of human rights, as well as solidifying the belief that human rights should be implemented in a world of cultural diversity thus securing a code of moral rules that do not coincide with utilitarian criteria. Thus defined, the issue of the essence of human rights makes it possible to understand that, at least in a limited cultural space, there are such cultural assumptions whose value horizon exceeds the utilitarian character and goes beyond the structures of tribal organization of social life reduced to codification based on the argument of force in resolving disputes. This value-oriented horizon creates an existentially safer moral world, because it disseminates a system of rudimentary categories necessary and conditioning for the functioning of our civilization, thus creates not only its security framework, but also determines and organizes all its essential senses, which can constitute its potential, that is, its strength and vitality, and thus secures its integrity, and therefore its permanence and persistence. Human rights, therefore, we can see as a tool for thinking about reality, for expressing our thoughts about it, especially in the context of normativizing the idea of having rights for all people, regardless of the culture in which they live and function (Freeman, 2007). The idea of human rights is a general concept, and the concept of human rights is abstract, (Hoffe., 1992). So is the concept of humanity, which in a cultural sense is not an empirical description, which also cannot be derived from

anthropological observation alone. The abstract nature of human rights, as well as the concept of humanity itself, find moral grounding. For there is no such phenomenon as human rights in nature, nor is there such a phenomenon as humanity, nor has anyone seen a human being, (Zamelski, 2011). For all these distinguished concepts find empowerment and grounding as moral values and can only be considered in terms of moral laws, these are the determinants of our way of thinking and are largely a consequence of transcending ethnocentric closure, for: "European cultural sameness reasserts itself in the refusal to accept any completed identification" (Kolakowski, 1984, p. 15). Defined in this way, the issue of the idea of human rights places in the broad spectrum of considerations not only a conceptual or institutional dimension, but precisely a moral one, and it is in this dimension that the search for an answer to the decisive question for the future of man about the necessary conditions for the survival of this being that is man and this reality that is culture is located. In essence, the question arises whether the project of human rights has not found an area of unconditionally obliging precepts, independent, among other things, of current experience, which can provide a sufficient and necessary source of certainty as far as possible from the utilitarian conjuncture narrowing to what is beneficial or not, useful or not. For the human being, understood transcendentally and not anthropologically, cannot be identified with the properties of human psychology, cannot be marked by accidental zoological characteristics of the species, but by the necessary conditions of possible experience, and these boundary conditions are specified in the form of free will and reason (Kolakowski, 1984). This gives rise to consequences, for this experience applies only to all rational beings, defined by reason, not species. Referring to Kant, Kolakowski notes that: "moral principles, despite the fact that, when formulated in unconditional form, they specify only the necessary formal conditions of any norm, are valid for any being acting freely, equipped with free will" (Kolakowski, 1984, p. 132). Moral security and morality as such can thus be realized in the assumption that humanity is not a natural object, a natural singularity or ephemeris, and that the humanity associated with it transcends the zoological object and situates itself in moral-only terms, beyond the reach of natural reflexes or primordial adaptive instincts: "humanity is not defined by the peculiar determinants that distinguish it from other species, but by its participation in the realm of rational necessities, epistemologically expressed as a set of synthetic a priori judgments, as well as in the realm of unconditionally compelling moral imperatives that are empirically impossible to determine" (Kolakowski, 1984, p. 132). The idea of human rights seems to be, in part, an exemplification of the Kantian realm of moral values and norms, which must not be deduced from descriptive judgments, the legitimacy of which would be based on and subordinated to each individual's decisions or current interests. This is the priority question for the legitimization of the idea of human rights, i.e. how to justify or discover rules and values that are absolutely obligatory, affirming human subjectivity, i.e. about which there will be universal agreement or at least understanding and consensus in the face of a concept that today seems either moralistic or legalistic, (Possenti, 2000). The universalization of the idea of human rights proposes equal rights and freedoms for every human being, thereby

incorporating the basic assumption of Locke's (Locke, 1992) natural right to liberty, among other things, which all human beings are entitled to by virtue of their very nature alone, which is still not a proposition or an absolute rule, especially since: "all value systems, as long as they are internally consistent can always defend themselves against logical and empirical criticism. For it is impossible to prove that religious tolerance is better than a regime, that equality before the law is superior to legislation that grants privileges to certain castes" (Kolakowski, 1984, p. 17). This question is important both for the legitimacy, implementation and universal recognition of the idea of human rights, and, in a way, is essential for the future of man as a moral being: "can our civilization in general survive without believing that the distinction between good and evil, the distinction between what is morally commanded and forbidden, does not depend on our each time decisions, that therefore it does not coincide with the distinction between what is beneficial and harmful" (Kolakowski, 1984, p. 132). So to recognize that moral rules coincide with utilitarian criteria is as much as to recognize that there are no moral rules, thereby accepting before our own nature that natural instincts are the criteria for human actions and behavior, the effects of which we can still observe in dehumanizing acts of human stupidity and thoughtlessness. It is unlikely to be enough, or neutralized, by the optimism of Enlightenment utilitarians naively believing in man's natural inclinations to perform acts in a spirit of solidarity and friendship, acts made real by illusory wishful thinking about a harmonious and conflict-free social order. The concepts of unconditionally obliging precepts and rules of duty were constructed in his philosophy of morality by Kant, who: "attempted to show that reason can justify a set of ethical and political rules on the basis of an obligation to respect the dignity of others, understood as moral, autonomous and rational individuals" (Freeman, 2007, p. 34). Thus, this criterion of justification and legitimacy of moral rules, on which the idea of universal human rights can be supported, is reason, hence the duties of and to the human being, are determined by participation in the realm of rational necessity, in the realm of moral imperatives, which cannot be empirically proven: "the question is not at all whether this or that actually happens, but what, happens according to the imperatives which reason by itself and independently of all phenomena issues" (Kant, 1953, p. 31). From an empirical point of view, the question of the legitimacy of judgments and the criteria of good and evil is not sensible, but for the consequences it is very often dangerous, because from the perspective of experience it is difficult to see something like good and evil: "Ethics in general can only exist insofar as it maintains a clear distinction between natural drives and duties, between what we do and what we should do, between the most common actual motivations of our actions and legitimate norms" (Kolakowski, 1984, p. 133). This distinction was a fundamental issue for Kant and was a fundamental attempt to establish the origin of good and evil as a matter of reason, not revelation, fundamental because the awareness of this distinction was, for the Königsberg philosopher, decisive for the moral future of man and the life of civilization. This distinction is also a fundamental issue today, for it constitutes the distinguishing feature of European culture, which remains the affirmation of the human person

and his privileged status as a morally acting subject. The Kantian legacy enlightened the minds of then and now with the category of the abstract human being, that is, one who is equal in his dignity to everyone else: "Kant believed in the indelible equality of human beings in their dignity as rational and freely acting subjects. (...) He also believed that all norms, insofar as they have a moral content, apply to every individual without exception, and that there are also claims that every individual without exception can make, for each should be treated by others as an end in itself and not as a means" (Kolakowski, 1984, p. 135). Kant's theory of natural law has constitutive consequences for both cultural assumptions and the resulting legal solutions: "each man separately, on the basis of general human nature, is entitled to certain fundamental rights; the Kantian postulate according to which we are to treat man, each individual, always as an end in himself, means that no man can be the property of others, that slavery therefore opposes the very notion of humanity" (Kolakowski, 1984, p. 136). This perspective makes it possible to discover and understand what is essential for the recognition of ethical standards, including what is a priority for the protection of, among other things, human dignity, that the negation or rejection of what is all-human makes it impossible to accept the sole basis of the principle of human rights: "for this principle can be legitimate only on the assumption that there are entitlements that everyone, as a human being simply, can revindicate, that is, on the assumption of everyone's equal participation in human nature, in other words, only on the basis of the theory of "abstract man" (Kolakowski, 1984, p. 136). Therefore, if we reject this notion, if this conceptual abstract is negated then it is difficult to have other solutions in this matter of human and social relations than ideological, and if this aspect of ideology dominates the space of entitlements and rights, then there will be no rights, and the human person's entitlement to dignity and freedom will become a rhetorical figure, a vague record hollowed out of its content, and then nothing will prevent the legitimization of slavery and genocide: "it is difficult to define what human dignity is, it is not an empirical finding, but without it we are in trouble when we try to answer the simple question: why is slavery wrong? For all its vagueness, the concept of human dignity is good enough to deal with such a question" (Kolakowski, 1999, p. 215).

Philosophical aspects of human rights

The human rights enshrined in the 1948 Declaration have a universal and common character, for they apply without exception to all people, living in any society and regardless of their situation and social position, they have a fundamental character, they constitute a privileged category that does not require any justification by other rights, and this means, that every human being has the right to assert his or her claims by invoking his or her humanity, they also have an inalienable character, for a person cannot cede these rights to other persons and no one has the power to deprive him or her of these rights, in addition, they are also inherent,

belonging to a person by virtue of birth, every person is born endowed with them. Human rights should therefore be classified in the category of moral rights, the validity of which remains unquestionable today, and the awareness of their existence seems unquestionable, although still too often only in the declarative sphere (Osiatynski, 1998). The founding premise of this corpus of fundamental and inherent rights is the adoption and affirmation of the concept of the person as an unquantifiable value recognized in its inalienable and inviolable rights. Enlightenment humanism has infused successive generations with such a vision of man, the abstract nature of which realizes and guarantees his status of being a subject, and from there it is close to humanity as a universal category, with which moral progress, understood also as the protection of the individual from violation of his autonomy, is likely to be realized. The vision of the Enlightenment that man is rooted in himself makes man aware of taking responsibility for his own choices, a moral attitude towards the world and precisely towards the reality of the other. What conditions this attitude of affirmation of humanity grows out of the assumptions of the Enlightenment heritage that "humanism is defined by the idea of man's incompleteness, his state of inevitable hesitation, his uncertainty resulting from freedom of decision" (Kolakowski, 1984, p. 22). This conviction sets in motion a state of perpetual way, but not of reaching the goal, a way of searching for solutions that create our presence in the world as moral subjects, and that manifests itself in the belief that no human being has the right to exercise power over another human being, power that is unintelligent, adopted under duress, unjustified and unlawful (Tischner, 1999). It seems that Europe's strength is realized in a shaky equilibrium, in the belief that there are no final solutions, and this self-knowledge is a kind of immunity mechanism built into the structure of European culture. To the destructive force of a homogeneous, because tribal, social structure, Europe opposes the ability to self-question, the ability to get rid of self-confidence and contentment, and this is what constitutes the spiritual strength of the project that is Europe. The idea of human rights is essentially, from a philosophical perspective, but also from a social perspective, to ask the question about the condition of human nature, about the constitutive conditions for the continuation of human beings in the transcendent dimension, about the essence of tensions and conflicts that can threaten human survival, and finally about whether there are landmarks and points of support that constitute the necessary conditions for its continued existence and development. This area of issues centrally places man as a causal, action-taking being, endowed with freedom of will, which freedom implies the ability to do good and evil: "whenever I call for freedom, I betray the secret of humanity, for I reveal that freedom is due to man" (Kolakowski, 1994, p. 38). Man understood in this dimension, transcending the characteristics of the zoological species participates in the moral and rational sphere, the sphere of unconditional moral imperatives that cannot be empirically determined. Humanity transcends the properties of nature, it is not defined by the peculiar determinants that distinguish it from other species. Humanity, therefore, is a moral concept, an attempt to make an endless intellectual effort that marginalizes inherent instincts in favor of the belief that man is a moral entity, being an end in itself, not a means.

Consideration and response to this question determines the status of man as a supra-biological being, and consequently may determine the fate of man and the future of civilization. To go beyond the tribal structure into which natural instincts push us is to constantly transcend utilitarian criteria, to build awareness that this purely abstract finding of human rights protects our mind and conscience from the temptation to treat others as tools. Consequently, we prove with the idea of human rights that humanity is not a zoological find, humanity is not a natural object, and morality is not reduced to the ad hoc, capricious decisions of each individual, for subjectivity is a construct of our free will, the realization of man's rational nature, dignity *ex definitione* is the proclamation of limits in the disposition of human freedom and decision-making, and freedom is a function of our intellectual potency beyond the horizon of narrow, utopian assumptions and dogmas leading to the cusp of absurdity. Human rights prove that we have mastered our weaknesses and the torments of our animal nature, that we have risen above our limitations and beyond the rationale of being reduced to a physical, corporeal existence. We also prove with them that the law cannot be worse than a misdemeanor or a crime, and that punishment is not revenge expressed in impulsively acting drives, as Aristotle points out when he writes about the force of an argument contrasting it with the argument of force. Generations have grown up with the belief that the majesty of law authenticates the entire apparatus of the tyrant's oppression directed against the individual, by the force of an abstract idea we have broken out of this order of tribal morality and today it is the source of universally binding law, and its protection is the duty of every political community. This idea today organizes our lives, and we are all its beneficiaries, for it expresses respect for the subjectivity of the individual, recognition of his individual expression, willingness to submit to the dictates of moral authority, and is the hope of building a coherent moral constitution. This perspective makes it possible to see that human rights are non-human in the genre sense, they do not refer to man as a representative of the natural world, but to man as a rational being, endowed with free will, desiring constant self-creation, exceeding the framework of his individual, measurable and predictable existence (Kolakowski, 2000). Being in such a dimension opens the space of consciousness beyond the individual, ethical values are actualized, in the field of vision of which another human being appears, who becomes a reference for the observance of norms and rules, and intellectual loyalty to reason appoints the causal instance, which is free will marking life henceforth with a conflict of opposing values remaining in constant tension. In essence, this conflict shapes man's humanistic subjectivity and determines the conditions of his survival as a creator and participant in social life. In the natural world, on the other hand, man is a completely reified figure, limited by his structure of existence and remaining, as it were, outside himself, a figure reduced to the function of an accidental, labile existence, in which the experience of meaning other than instincts and passions does not exist, or is radically reduced to mere material content and is based on the inherent inclinations belonging to natural objects (Kolakowski, 2002). The object of human rights is the assumption of man's emancipation from the natural world, the rejection of the "material" and the attempt to achieve an authentic way of

existence. Human rights realize, in a philosophical perspective, that man establishes his presence in the world by becoming, by taking responsibility for life, by affirming life, which ceases to be the place of his exile and alienation. It is hard to resist the impression that it is in concepts that the deeper meaning of human existence and human subjectivity is encoded, and through concepts we recognize fundamental assumptions about the moral destiny of a rational human being. Finally, it seems that the idea of human rights represents the kind of optimum that man, under the conditions of his biological condition, could achieve and still can achieve, for this idea shows the direction of the development of the individual and the collective in which he can participate, the taming of innate instincts and the establishment of a legal instance and subjective barrier against the restraint of this subjectivity by the institutions of the state.

Conclusion

The essence of the idea of human rights is the recognition of the inherent and inalienable rights that the human person acquires at birth and that are due to him by virtue of being human. This is and has been a historically revolutionary assumption, as it points to the autonomy of the individual, ascribes absolute value to him as a moral subject, grants him personal rights and the right to participate in authority, and safeguards against the intrusion of that authority into spheres henceforth considered personal and private. This is not a revolutionary assumption from a transcendental perspective, and is based on duty criteria, absolute principles and norms having justification in the highest authority, which is reason. Thus, human rights are a morally constituted reality, the source justifying and proving the existence of these rights can only be an appeal to transcendence, not to anthropology. This conviction autonomizes the human individual in his rights concretizing in the adoption of the universal consciousness that a human being can not only be free, but that no human being can belong to another human being becoming his property, hence the adoption of this perspective can effectively oppose the evils of slavery or its version of social-Darwinism. A consequence of the moral theory about rational and freely acting moral subjects is the basic assumption on which the idea of human rights is based, concerning the inherent and inalienable dignity of man as a source for his freedom. This is a fundamental issue for legal and constitutional solutions in a modern democratic state, since, in addition to the positive law established by the institutions of the state, it is the dignity of the individual as an expression of natural law that must be taken into account and honored by positive law that matters (Banaszak, 2004). The right to dignity as inherent to the individual is independent of the established positive law and is a reference for the system of values that positive law tries to promote and realize: "the recognition of inherent dignity as the source of all rights indicates their a kind of secondary nature to the person, their subordination to his good. The *raison d'être* of their existence and such and not other content is man, they do not

have an independent existence. The relation to the well-being of man as a whole is an integral element of any law and cannot be disregarded in determining the content of the formulated demands. Consequently, the ultimate reference point of a legislated legal order protecting or respecting human rights is not these rights, but the human person" (Piechowiak, 1999, p. 78).

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