

M.M. Buzurtanova 

Al-Farabi Kazakh National University,
Kazakhstan, Almaty, e-mail: marem_buzurtanova@hotmail.com

THEORETICAL FOUNDATIONS FOR INTERDISCIPLINARY STUDY OF HUMAN RIGHTS

The article discusses the problematics of interdisciplinary study of human rights and the possibility of development of a coherent theoretical basis thereof that would contribute immensely into the human rights field both academically and practically. The question the author raises is whether there would be a possibility for human rights scholars to go beyond legal positivism and to overcome postmodernist methodological cul-de-sac or whether there may be such an analytical framework that would provide the tools necessary to supplement the contemporary human rights studies conducted within social sciences and humanities – which are almost inclusively descriptive – with a number of explanatory models.

The article presents the comparative and critical analysis of the theoretical findings in the literature on human rights by the numerous scholars in history, philosophy, international relations, anthropology and ethnology, as well as natural science in order to establish the premises upon which it could be possible conduct effective interdisciplinary research on human rights which would include where analysis units are Individual, groups of individuals, communities, nations and supranational structures respectively.

Key words: sociology, human rights, paradigmatic impasse, interdisciplinary research.

М.М. Бузуртанова

Әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: marem_buzurtanova@hotmail.com

Адам құқықтарын пәнаралық зерттеудің теориялық негіздері

Бұл мақалада біртұтас «теория» негізінде адам құқықтарының пәнаралық зерттеулерінің мәселелері қарастырылады, оны әзірлеу және дамыту тек ғылыми тұрғыдан ғана емес, сонымен қатар адам құқықтарын қорғау саласында жұмыс істейтін көптеген практиктер үшін де даусыз мәні бар. Автордың назарына құқықтық позитивизм шеңберінен, сондай-ақ постмодернистік парадигмалыды түйықтан шығу, қазіргі уақытта тек қана сипаттамалық, кейбір түсініктеме модельдері болып табылатын адам құқықтары туралы қазіргі заманғы әлеуметтік ғылымдарды толықтыруға мүмкіндік беретін аналитикалық құралды құру мүмкіндігі алынды.

Мақалада тарих, философия, әлеуметтану, халықаралық қатынастар, антропология, этнография, сондай-ақ жаратылыстану салалары авторларының адам құқықтары проблемасына қатысты теориялық ұстанымдардың салыстырмалы және сыни талдауы берілген, соның негізінде тұрақты антологиялық негізі бар, талдау бірлігі ретінде жеке тұлға және индивидтер тобы, мысалы, қауым және қауымдастық ретінде кіретін толыққанды пәнаралық зерттеу бағдарламасын әзірлеу мүмкіндігі туатын сәттерді анықтау тұрғысынан берілген, сондай-ақ ұлттық мемлекеттер мен ұлттықтан жоғары құрылымдар да бар.

Түйін сөздер: әлеуметтану, адам құқығы, парадигматикалық импост, пәнаралық зерттеулер.

М.М. Бузуртанова

Казахский национальный университет имени аль-Фараби,
Казахстан, г. Алматы, e-mail: marem_buzurtanova@hotmail.com

Теоретические основы междисциплинарных исследований прав человека

В данной статье рассматривается проблематика междисциплинарных исследований прав человека на основе целостной теории, разработка и развитие которых имели бы неоспоримое значение не только с научной точки зрения, но и для большого числа практиков, занятых в области защиты прав человека. В фокусе автора – возможность выхода за рамки как правового позитивизма, так и постмодернистского парадигмального тупика, построения такого

аналитического инструментария, который позволил бы дополнить современные социальные науки о правах человека, являющиеся в настоящее время почти исключительно описательными, некими объяснительным моделями.

В статье представлен сравнительный и критический анализ теоретических позиций по отношению к проблеме прав человека авторов из таких областей, как история, философия, социология, международные отношения, антропология, этнография, а также естествознание на предмет выявления тех моментов, на основе которых возможна была бы разработка полноценной междисциплинарной исследовательской программы, имеющей прочные антологический основания, и которая в качестве единиц анализа включала бы в себя как индивида и группы индивидов, например общины и сообщества, так и национальные государства и наднациональные структуры.

Ключевые слова: социология, права человека, парадигмальный тупик, междисциплинарные исследования

Introduction

The need for interdisciplinary studies of human rights has mostly overlooked within the academia and practitioners. Until 1970s human rights studies had been conducted mainly by lawyers (Freeman, 2002) and legal positivism did not and should not ask “why” questions as, from its perspective, human rights existed because the law existed. Remarkably, the other disciplines were predominately silent about rights since the end of the 19th century until fairly recently. Moreover, many of those who chose to be directly engaged into study renounced any ontological and epistemological projects concerning human rights. Indeed, it appeared almost impossible to ask “*why human rights?*” without being accused of essentialism and, therefore, not doing proper science, but roaming amidst the phantoms of metaphysics. Thus, paradoxically, agnostic relativism and gnostic positivism appear to provide the epistemological boundaries to almost all contemporary human rights studies. Thus, both Freeman and Turner noted that social science being under strong influence of positivism had portrayed itself as value neutral (Freeman, 2002, Turner, 1993). Relativism renounced any “normative” foundations, post structuralism killed “human”, postmodernism deprived us of “reality” and positivism, as Horowitz noted, depreciated to “empiricism lacking any theoretical basis” (Horowitz, 1994: p.18). As Gearty rightly noticed “in a place where everything is true, nothing can be *really* true” (Gearty, 2005: 17).

The lack of a coherent theoretical basis undermines human rights activism where universalist moral calls had never been abandoned. Gradually, moral questions appeared within public discourses again – the increasing esuriency for morality has been noticed by Sender and Ungar – but this moral talk seems to have been expelled from intellectual spaces to those of religion and nationalism (Sender,

2010; Sander, 2012; Ungar, 1998; Ungar, 2006). Yet those, as well as universalist attitudes of the activists (Langlois, 2002), bear considerable risks for human rights that were explicitly explained by some (Gearty, 2005: 20, 21). Therefore, it is particularly important for human rights scholars to “meet the demand” having admitted eventually that a general theory of human rights cannot and shall not escape moral judgments (Turner, 1993).

The relevance of the debate on the possibility to build the theoretical foundations is even more apparent given impossibility of the “normal stage” (Kuhn, 1996) for any human rights “science” because of epistemological incompatibility of the task per se. This incoherent wanderings amidst positivist and postmodernist paradigms is increasingly perceived as unsatisfactory both practically and academically. Suppose a general theory of human rights is to emerge. One may argue that it shall combine “how” and “why” questions, be both explanatory and descriptive, tell us where human rights come *from* and where human rights go *to*. In other words, legal studies and social constructivist research may continue, but they shall be amplified by the contributions of other disciplines so that a holistic inter-disciplinary theoretical basis would enable the scholarship on human rights to leave “shop of differences” (Turner, 2001: 112) and reveal the secret of human rights’ “global appeal” (Donnelly, 2003: 19).

Therefore, the author aims to conduct a comparative and critical analysis of the theoretical findings in the classical and the most contemporary literature on human rights left by the scholars in such disciplines as history, philosophy, international relations, anthropology and ethnology, as well as natural science – that has entered the focus of scholarly attention relatively recently – in order to establish the premises upon which it could be possible to draw a comprehensive map that would

enable effective interdisciplinary research on human rights which would include Individual, the groups of individuals, communities, nations and supranational structures as its analysis units.

Sources and Methods

The study constitutes a qualitative comparative and critical analysis of the sources. The secondary nature of all sources within the study is predetermined by the research goal discussed above in the previous section of this article, which is to critically analyze, compare and contrast the literature in history, philosophy, international relations, anthropology and ethnology that touches upon human rights in order to find any premises on which the theoretical foundations for interdisciplinary human rights research may be based.

The criteria how the materials were selected are the following: firstly, the literature that is normally included in majority of human rights programmes and studied by both human rights students and practitioners – that would normally include both the classics of political philosophy and the most recent publications by legal and social scholars and, secondly, the literature dealing with the aspects being usually on the periphery of scholarly attention such as natural science literature that may contribute seriously, in the author's opinion, to building of the theoretical foundations of interdisciplinary human right studies.

Thus, the author consistently surveyed the material selected in order to find the answers the following research questions:

- whether those disciplines provide any epistemological and/or anthropological foundations for human rights;
- whether there have been any attempts to build a comprehensive human rights theory;
- whether those disciplines make it possible to build such a theory or, to be more precise, to provide theoretical basis for future research on human rights of an interdisciplinary nature;
- how such a theoretical basis may be outlined.

Literature Review

History. About 1772 BC The Code of Hammurabi proclaimed that “the strong might not injure the weak”, that the law was there “to further the well-being of mankind” and “to give the protection of right to the land” (Hammurabi, 2004). In 1948 the Universal Declaration of Human Rights (UDHR) coined “inherent dignity and the equal

and inalienable rights of all members of the human family” (UNGA, 1948). The history of human rights or, more properly, the history of the ideas that brought about human rights shall tell us what happened in between.

The following is a brief outline of historical account of human rights the students find when they study the discipline. Quite a few human rights scholars, namely those who opt to employ historical method, start with natural laws of the Greeks and Romans. However, it is more common to start either with the medieval Europe or with the Enlightenment. After dealing with “social contracts” of Hobbes, Lock and Rousseau, authors typically proceed to discuss how the Rights of Men based on the natural law of God or Reason appeared in the American and French declarations as being self-evident and to which we are inherently entitled by virtue of being humans. Giving an account of the critique of Bentham, Burke, and Marx (but not that of Nietzsche), many focus on how the atrocities of the two World Wars made the UDHR happen (Brems, 2001; Gearty 2005; Goodhart, 2010; Freeman, 2011; Donnelly, 2003).

It apparent that this kind of narrative is confined in the two following aspects. First, it is limited in terms of both space and time. In other words, it is both Eurocentric and modernity centric although one shall note that the number of authors with more unconventional approaches to human rights history increases (Berman, 1995; Ishay, 2004; Gearty, 2005; Gearty, 2013; Donnelly, 2013).

The most commonly cited reasons for such Eurocentric approach may have a number of plausible explanations/ here re give some of them. First is similar to that given by Brems (2001) who claims that any references to non-European contexts cannot be taken seriously as they originate, mainly, from European “guilt” (Brems, 2001: p.8). Another plausible explanation is the focus on the vocabulary; having looked for the “right” word and not having found it (MacIntyre, 1981), it was concluded that human rights did not exist outside Western Europe of modernity. As if after not having found the word “capitalism” in the Communist Manifesto, one would assume that the text does not touch upon the subject at all. The third one is that human rights have come into our discourses rather recently, two hundred years ago (Henkin, 1979) or in the 1970s (Moyn, 2010). Although it may be technically true, the question still stands: why within the European history of ideas, the precursors to human rights have been sought for and found but those beyond the European writings and experience been overlooked.

The second remark worth making about commonly accessible human rights history is that this is a history of “right givers”, but not that of the “rights takers”; these are the accounts of those who were affiliated either with the elite or counter elite in a particular historical context. What lacks here, to my thinking, is a history of the oppressed, of their deeds, words and writings, because, as Donnelly said “ability to claim the rights we do not have is even more important” (Donnelly, 1989).

Therefore, although it would be sensible to incorporate history to the social science on human rights, it is still important to insist that such history should cover experiences beyond Europe and before modernity.

Yet, history has not become a predominant component of human rights studies so far. As Besson and Zysset rightly noted, scholars are reluctant to do so as they are concerned that historical method would undermine “universality” (Besson, Zysset, 2012). However, one may imagine quite a different outcome, provided the limitations discussed above are overcome, such history of human rights ideas may tell us local stories as parts of universal experience because as it was noted we study what man has done to discover what man is.

Philosophy. While it appears that the rights had not *existed* (or, say, *practiced*) almost everywhere for almost all history of the mankind, before such practices *emerged* in particular places in particular circumstances, the ontological question is, when the rights come to their existence. Is it when they are first thought of or written about? Is it when they are first fought for? Is it when they are recognized as such? Is it when they are respected, protected and fulfilled? One may argue that the nature of human rights means that *all questions* above must be answered affirmatively.

The philosophers who had spoken on the subject indirectly until the Enlightenment and directly since, according to Hart, were seeking for human rights’ foundation in the following four domains: God, reason, nature and convention (Hart, 1997). Paradoxically, in the beginning of the 20th century, philosophy, which had evolved by then into either analytic philosophy or logical positivism, abandoned the subject altogether.

In the second part of the 20th century, the critical theory, having departed from Marxist structuralism, appeared rather promising in terms of human rights conceptualization through the lenses of emancipation but it soon was replaced throughout western academia by Foucauldian antihumanism (2013), who challenged the notion of ‘individual’.

Following Nietzsche, who famously declared that “there are no facts, only interpretations” (as translated by Kaufmann, 1954 p. 458), post-structuralism problematized knowledge and “objective’ reality” diving further into epistemological nihilism (Derrida, 1967; Baudrillard, 1994).

Gradually, however, interest to explore and, possibly, understand the nature of normative principles, values and behaviors resumed. Rawls’ *A Theory of Justice* and Nussbaum’s *Non-Relative Virtues: An Aristotelian Approach* marked the shift; both were aimed at finding whether justice can be founded in any natural condition of humanity (Raw, 1971; Nussbaum, 1988).

Along with lawyers and historians, the endeavor requires contribution from philosophers, sociologists, international relations experts, anthropologists, ethnographers, and natural scientists so that it would be genuinely comprehensive and embrace all levels of analysis, from group and community, supranational, national and international. Thus, further the disciplines are surveyed according to the levels of analysis (Waltz, 2001).

International Studies: Supranational Level of Analysis. International relations theory may be applicable to understand why the states make human rights commitments. The discipline looks at the subject from three perspectives; the “realists” see human rights as a tool of the powerful states to impose their will on the less powerful (Vincent, 1986), the “idealists” attribute states’ behavior to the values that rule on the international arena, and the “liberals”, taking a middle ground, say that it is in the interests of states to behave themselves.

As time passes, more nuanced approaches appear. The “regime” and “boomerang” theories embrace both supranational and subnational analysis. Donnelly, for instance, distinguishes “declaratory”, “promotional”, “implementation” and “enforcement” regimes and problematizes evolution of human rights regime into “implementation” and “enforcement” stages as they may often challenge national sovereignty (Donnelly, 1984).

The ‘boomerang theory’ of Risse, Ropp and Sikkink, explains changes of states’ behavior through internal pressure by social movements and external one from other states and NGOs (Risse, Ropp, Sikkink, 1999). Thus, state centric approach has been complimented by supranational analyses focused on social movements and change (Foweraker, Landman, 1997). More supranational analysis of human rights and social movements were done (Kaldor, 1999; Finnemore, Sikkink, 1998).

Sociology: National and Sub-National Level of Analysis. The studies of human rights on supranational, national and sub-national levels are complementary and often, but not always, intermingled. Human rights had not been a central issue for sociology as, after Durkheim, it desired to distinguish itself from philosophy and to treat “social facts as “things” until Dworkin’s *Taking Rights Seriously* was published (Dworkin, 1978). However, if, from a sociological point of view, human rights are ‘social facts’ without inherent value, one may ask, as Freeman did, whether the claim to do neutral, objective science is not a value of itself.

The most known writings on sociology of human rights, namely social-constructivist *Human Rights and the Universalization of Interests* (Waters, 1996), universalist *A Neo-Hobbesian theory of Human Rights: A Reply to Malcolm Waters*, (Turner, 1997) and neither relativist nor universal *The Concept of Human Rights in Universal Human Rights in Theory and Practice* (Donnelly, 2003), if compared and contrasted, may provide a true picture of the contemporary debate of human rights from sociological perspective.

Turner’s aim is to be both sociological and essentialist, to find a universal of human ontology and to explain their non-relativist character. For Turner foundations of human rights are in shared experience of human frailty and collective sympathy as well as in the precariousness of social institutions (Turner, 1993: 506; Turner, 1997). His idea of human frailty” is a universal experience of human existence is shared by Scheler’s “we-feeling” (Scheler, 2017) and Chair’s “post-factum rationalization of rights in God, law or custom (Chair, 1999).

The other sociological take on the subject is closer to the “rational choice” theory. Waters (1996), although he describes his analysis as social-constructivist, follows the realist tradition of international relations theory. He rejects Turner’s explanation of human vulnerability, institutional threats and collective sympathy. His human rights were born because of four sets of interests: those of Allies of the Second World War to discredit their defeated enemies and establish themselves globally as moral arbiters; Cold War rivalry; pretext for intervention into domestic affairs of the other states; claims against the state actions for less privileged groups. The major feature of Waters’ analysis is that it does not distinguish rights from “rights” rhetoric (Waters, 1996).

Donnelly’s analysis is both from sociological and international relations perspectives. Sharing libertarian distrust for states, he warns against

taking them as the major deliverers of human rights as it would require increase in the power of states, which, themselves, are the major cause of human-rights problems (Donnelly, 2003). After taking a broad and deep look at human rights theory and practice in Europe and elsewhere, Donnelly deliberately chooses quite a narrow reading of what human rights are and rejects any enquiry into cultural traditions. For him, human rights are contemporary norms about individual autonomy and equality that are generally accepted product of a particular time. The middle ground approach was also chosen by Nickel. Laclau also argues for placing fragments of the universal into any given peculiarity because “concept of particular can only be constituted in relation and reaction to a given concept of the universal” (Nickel, 1987; Laclau, 1992).

There may be possible to make three observations about social science of human rights. First is that the narrower is the scope, the more particularistic is the position of the author. If the rights are taken as they are only understood in western liberal democracies, not surprisingly, they are not found elsewhere. Therefore, there are two ways to escape universalist/relativist debate, to abandon any aspiration to find ontological foundation or to try to understand human rights as broadly as possible.

The second observation is that relativism/universalism debate is not only epistemological; there are concerns about political consequences; some universalists openly accuse their opponents of being advocates of authoritarian regimes, while the relativists (Laclau, 1992) think that prevalence of universalist paradigm might pave the way for further western neo-colonial practices.

Anthropology. Community and Group Level. Anthropology has gone a long way from complete denial to direct engagement into political struggle beginning with “AAA Statement on Human Rights” (AAA, 1947) to special issue (JAR, 1997) with the *Cultural Survival’s Human Rights and Anthropology* volume (AAA, 1988) in between.

Anthropology’s focus on non-Western ‘primitive’ societies may give some insights about the life of the rights without elaborated structures of modern nation states, it could tell us how the rights live (if ever) in quasi prehistoric environment. It also may tell us more about the rights in contemporary cultural mélange of pre-modernity modernity and hyper-modernity. Wilson suggests studying the ‘social life of rights’ ethnographically to locate the foundations of human rights in ‘everyday human sociality’ (Wilson, 2006).

Anthropology appears to be very well equipped to answer “how” questions. Not surprisingly, it cannot assume that all cultures shared the same values as its detached methodology and focus on peculiarities prevent it from finding commonalities because they just escape its attention and because to find them would require departure from observation for more interpretive techniques.

Discussion

Interestingly, but it seems that the rights ideas have come full circle and return to “natural rights” again. As Donnelly said “one cannot stop being human (Donnelly, 2003:10). These new natural rights are not understood metaphysically and are located in human condition as scientific phenomena. Natural does not mean pre-social/unsocial or abstract, quite the contrary, as we all are social animals there shall be commonalities that are worth exploring.

Evolutionary ethics (Arnhart, 1998; Harcourt, de Waal, 1992) is an effort to find the morality based on evolution of human psychology and behavior; it takes morality as evolutionary ancient and empirically observed not only in humans. O’Manique states that human rights are founded upon something inherent to humans, which is, obviously, the cause of survival (O’Manique, 1992). Dyck argued that human rights logically and functionally necessary and universally so for the existence and sustenance of communities (Dyck, 1994).

In the meantime, Particularists claim that the differences are so profound that it is virtually impossible to think of humanity per se. The question is whether the differences reach such an extent that it is no longer possible to speak of humans as the same species. To answer this question affirmatively MacDonald does, for whom “men do not share a fixed nature” (p.30) requires refusal to consider any empirical facts from natural science (MacDonald, 1984). As Berman (1995) noted “not only those in Africa, Asia and the Middle East, but those in Western universities seem to be determined to persuade masses of people that they have nothing in common with each other” (Berman, 1995: 333). Foucault et al disparaging all the so-called “normal” people, still keep demanding empathy and recognition, just as if we belonged together to a humanity that they insist cannot exist. And deep down their demands are rights (Foucault, 2013: 140).

The solution may be by replacement of “nature vs culture” preposition by “nature into culture” one, meaning that it is in our nature to

make culture. But, paradoxically, the opponents claiming their methodology to be the only applicable as it leads to true knowledge have been persistently resisted to consider any insights coming from natural science.

Particularists’ challenge of essentialists’ studies for neglecting cultural differences can be returned. Why is it more scholarly “right” to consider differences and ignore commonalities? Why cannot we do both. Why human rights theory cannot be dialectical, i.e. explanatory, saying from where human rights come from and descriptive, telling how they live their “social life”.

The fact that human rights are never for all does not mean that there is no foundation for them, otherwise people had not noticed that something was wrong and would not have revolted. There should be the humus they finally grew from and where the want for rights continuously drenches from. There are plenty of “circumstantial evidence” that people never stopped to dream about their better lives of freedom and dignity in history (from the War of Spartacus to numerous peasant revolts) and imaginary history (from Robin Hood and Zorro to the Amazons). Thus, this dream was embodied in Hero characters.

Conclusions

The problematics of interdisciplinary study of human rights and the possibility of development of its coherent theoretical basis beyond legal positivism and postmodernist paradigm has been discussed, as well as the analytical tools and explanatory models for such studies.

The comparative and critical analysis of the literature on human rights in history, philosophy, international relations, anthropology and ethnology enabled to assume that there are some premises upon which an effective interdisciplinary research on human rights would be based. Apart from philosophy and history, the other literature has been classified in accordance to the unit of analysis it may emphasize while being incorporated into interdisciplinary study of human rights, namely Individual, groups of individuals, communities, nations and supranational structures. The revival of the “natural rights” paradigm that may potentially contribute into further development of a holistic human rights theory has been detected. Contemporary natural science has been identified as a fruitful terrain where the conceptualization of such “natural rights” may be rooted.

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