

Putting Human Rights to the Test. Claims, Interventions and Contestations since 1990

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The conference discussed the development of human rights since the 1990s. Historical enquiries into human rights accelerated quickly since the mid-2000s. A vibrant field developed that contributed research on specific regional, political, social, and institutional aspects of human rights history. Human rights historiography focussed on the 18th century and on the post-World War II order, particularly on the 1970s. Recently, shifts in the relevance and meaning of human rights after the end of the Cold War were increasingly – sometimes controversially – discussed. While the concept of human rights has profoundly shaped politics since the 1990s it cannot be conceptualized as a linear success story, as NORBERT FREI (Jena) argued in his opening remarks. Its principles remained contested and hopes of global human rights protections were soon confronted by genocides. The conference aimed at bringing together new research on human rights in this period. The participants came from different fields of the humanities, the social sciences, law, and human rights advocacy.

In his keynote, JAN ECKEL (Tübingen) offered observations for categorizing the human rights developments since the end of the Cold War. He argued that while human rights were part of the triumph of democracy their success was double-faced. Their ascendancy provoked contestations and fractures, some of them continuities from the Cold War period, others more distinct for the 1990s, for example the critique of humanitarian interventions or the War on Terror. Eckel concluded that, throughout the 1990s, human rights preserved their relevance for civil society, legal and political systems, but lost their vigor, as demonstrated by their absence in the anti-

globalization movement of the late 1990s and the Arab Spring. Eckel therefore suggested characterizing human rights in the 1990s as victims of their own triumph.

The first panel chaired by Miriam Rürup focused on human rights expansions after 1990. It asked whether human rights became relevant for new thematic fields after the end of the Cold War. KNUD ANDRESEN (Hamburg) presented a case study on the relevance of human rights in multinational companies in South Africa. He argued that although companies embraced diversity their policies did not contribute to a decrease of wider social inequality. Andresen concluded that even in a country like South Africa, in which human rights fared prominently in its post-apartheid constitution, it remains doubtful whether social inequality can be achieved by references to human rights.

CELIA DONERT (Liverpool) investigated the transformation of women's rights into a human rights issue. She argued that the collapse of socialism opened a new era of women's rights for which the 1993 UN Human Rights conference in Vienna, the 1994 Conference on Population and Development, and the 1995 UN Beijing Women's conference were milestones. Donert demonstrated that violence against women and health became two major issues for women's human rights campaigns and argued that the shift from social to sexual justice represented a wider transformation from collective to individual rights.

PAUL VAN TRIGT (Leiden) analyzed whether human rights were significant for the disability movement's demands. During the UN International Year of Disabled Persons, in 1981, the UN General Assembly did not emphasize individual rights but demanded the establishment of a new international economic order. He argued that such references vanished in the 1990s and became replaced by calls for rights to opportunity in the early 1990s, followed by an explicit human rights approach embodied in the 2006 UN convention.

The second panel was chaired by Jost Dülfer and shifted the focus to human rights policies. It discussed the objectives of and the hopes placed in military, legal and ac-

tivist interventions in the name of human rights. STEPHEN WERTHEIM (New York) discussed the concept of humanitarian interventions in US foreign policy discourse. He argued that while the concept was not new, it only rose to prominence in the late 1990s based on the experience of the genocides in Rwanda and Srebrenica. While there was widespread consensus about the legitimacy of humanitarian interventions to stop a genocide, Wertheim criticized that the writings of US foreign policy elites were less clear about what to do in practice. He concluded that the rise of humanitarian interventions facilitated the War on Terror and the Iraq War.

MARKUS EIKEL (The Hague) discussed the development of international criminal law and the International Criminal Court (ICC) from the 1990s to the present. He argued that the end of the Cold War revived an interest in international criminal law that gained new momentum as a result of the two International Criminal Tribunals for the former Yugoslavia and Rwanda. Based on archival research, Eikel argued that the German government supported the ICC's establishment based on a moral stance towards justice and the desire to demonstrate the new global capacity of a unified Germany. While he stated a more recent „tribunal fatigue“, he also emphasized positive developments like progress in national proceedings investigating crimes in Syria and hybrid tribunals.

BARBARA KEYS (Melbourne) analyzed reports by Human Rights Watch (HRW) to its donor, the Ford Foundation. She stressed that they point to HRW's new interventionist tactics in the 1990s. HRW became convinced that investigating and reporting abuses was not sufficient anymore. Keys argued that HRW went beyond criticizing the gap between human rights rhetoric and practice and began punishing non-compliance in the economic realm. She pointed to three HRW campaigns directed at China, the 1991 prison labor campaign, the 1993 Olympics campaign and the 1995/96 Three Georges dam campaign.

The third panel was chaired by Daniel Stahl and discussed reactions to the human rights expansion during the 1990s, focusing on contestations of human rights norms. KATRIN KINZELBACH (Berlin) used the „Asian

values debate“ of the 1990s to discuss the meaning and distinctions between values and rights. She emphasized that a discourse about „Western values“ and a long history of Western particularism and othering preceded the „Asian values debate“. Using China as a case study, she demonstrated the government's current efforts to contest universal human rights based on terms like „human rights with Chinese characteristics“ or the phrase „community with shared future for mankind“ stressed by Xi Jinping. Kinzelbach closed by arguing that while there are real challenges to human rights by authoritarian states, focusing on counter-discourse might underestimate the relevance of human rights for social movements and political ideas.

GUDRUN KRÄMER (Berlin) presented the history of Islamic scholar's debates about equity and equality. Due to the anti-colonial struggles in the 1930s, in which non-Muslims participated, Islamists rethought their position of equalizing religious with social superiority. They either favored rigid conceptions of difference or fairness towards non-Muslims, women, and the poor as long as they stayed in their place. While this would constitute an open contestation of human rights and liberal values, the appeal of these concepts was extremely limited. Concepts of a civic/civil state with a religious frame of reference became more attractive to Islamic scholars and are discussed until today.

AVERELL SCHMID (Boston) talked about how the US contested the prohibition of torture after 9/11. The US ratified a number of conventions against torture but, after 9/11, the Bush administration contested these instruments based on Department of Justice memos on the non-applicability of the Geneva Convention, the extension of the definition of pain and expanded Commander-in-chief authorities. Based on an analysis of WikiLeaks documents and interviews, Schmid argued that only a limited number of states employed similar legal concepts. In their majority, states did not embrace the US's contestation and accused the US of hypocrisy.

ROBERT HORVATH (Melbourne) discussed what he called the extraordinary transformation of Russian human rights conceptions since the end of the Cold War. After

the collapse of the Soviet Union, references to human rights legitimized the Russian leadership and Russia held a pro-Western position in favor of universal rights at the 1993 UN Vienna conference. When Putin became president in 2000, he mobilized national sentiments against universalism while at the same time paying lip service to international human rights. During his second term, his policy shifted to active international norm contestation based on the defence of „traditional values“.

In a fourth panel chaired by Nina Reiners, contributors studied the role of human rights within different academic fields. ANNETTE WEINKE (Jena) investigated the development of transitional justice, its conceptions of history and its relationship to historiography since the 1990s. She argued that although transitional justice owes its life to the growing influences of postmodern ideas like postcolonial studies, gender studies or everyday history, its conceptions of history remained state- and Western-centered. She concluded that transitional justice's modernist and emancipatory outlook has not caught up to the fundamental epistemological changes that have revolutionized history in the last thirty years.

MATTHIAS KOENIG (Göttingen) observed the role of human rights in the social sciences, particularly in anthropology, sociology and political science. He argued that the human rights euphoria of the 1990s took these disciplines by surprise as each of them had its own epistemic blockages. Across all disciplines though, the 1990s also led to new forms of engagement and all three fields were enlisted in research agendas investigating human rights. Examining the Neo-institutional school in sociology, Koenig argued that scholars basing their work on concepts of world polity theory focused on human rights' institutional structures, their cultural meaning, and their effects on the domestic level. He concluded that the field now moves in two distinct directions: ever more refined quantitative measures of human rights and human rights practices on the one hand and intellectual saturation and scepticism towards human rights on the other hand.

HEIKE KRIEGER (Berlin) discussed the

role of international law and international lawyers for human rights. She argued that after years of the rise of human rights law, there is increased scepticism today. This resulted from not only external but also internal challenges, particularly the conflation of rights and interests, the increasingly traditional approaches to human rights including the legal principle of proportionality and a balancing process of conflicting rights, and the association of human rights with Western powers instead of universal claims. Krieger also investigated the relationship between law and activism, arguing that while activism conflicts with the fundamental belief of the autonomy of law, legal research includes opportunities to change international law. For some scholars, human rights seemed to be promising to expand international law on the basis of morality while others remained sceptical. Krieger concluded that neither an excessive conservatism, nor an excessive activism would serve international human rights protections.

The conference ended with two observer statements. CAROLA SACHSE (Vienna) was relieved that arguments over periodization within the historiography of human rights were replaced by productive efforts to analyze long-term developments and shifts in the meaning of human rights. The conference showed that inter-cultural comparison can be productive in understanding the strengths, weaknesses and risks embedded within human rights conceptions. She argued that specifying which human rights participants referred to would be important as human rights understood as a singular entity entail several contradictions, particularly between individuals and collectives like families, religions or cultures. Future research could address changing meanings of human rights and focus on geopolitical aspects of human rights. It could shed light on why the movements against human rights turned out to be intense and powerful after an initial period of human rights expansion at the beginning of the 1990s.

MICHAEL STOLLEIS (Frankfurt am Main) followed up on that point, emphasizing the strong distinction between the hopes of the early 1990s and the disappointments of today given developments in the Islamic world,

Putin's Russia, Turkey, neo-nationalism and neo-fascism in Europe and right-wing populism against the European Union. At the same time, he observed an increase in legal instruments and an enormous growth in human rights documents. While such developments do not automatically amount to improvements, Stolleis identified signs of hope. They include the expansion of authorities of the International Criminal Court in The Hague, a consolidation of rules of customary international law, the rejection of genocide and war of aggression, and the expansion of human rights to new thematic fields like disability or gender and the protection of culture and language. Stolleis concluded that a global state or world-society is a distant dream and that the impulse of nationalism and the nation-state cannot be repelled. Hence, states and supra-national institutions have to be motivated to protect human rights legally and factually. He concluded by calling on scholars to take the contestations of human rights more seriously to understand where their attraction is coming from.

Konferenzübersicht:

Norbert Frei (Universität Jena): Welcome

Jan Eckel (Universität Tübingen), Keynote: Victims of their Triumph. Human Rights since the 1990s

Panel I: Expansion

Chair: Miriam Rürup (Institut für die Geschichte der deutschen Juden, Hamburg)

Knud Andresen (Universität Hamburg): Multinational Corporations after Apartheid in South Africa

Celia Donert (University of Liverpool): Women's Rights as Human Rights after 1990

Paul van Trigt (Universiteit Leiden): The Fall of Utopia and the Integration of Disability in International Law

Comment: Andrea Liese (Universität Potsdam)

Panel II: Intervention

Chair: Jost Dülffer (Universität Köln)

Stephen Wertheim (Columbia University,

New York): Transformative Interventions: The Militarization of Humanitarianism

Markus Eikel (International Criminal Court, The Hague): International Criminal Law and the Prosecution of Human Rights Violations

Barbara Keys (University of Melbourne): The Convention against Torture as a Tool of Intervention

Comment: Claus Krefß (Universität Köln)

Panel III: Contestations and Alternatives

Chair: Daniel Stahl (Universität Jena)

Katrin Kinzelbach (Global Public Policy Institute, Berlin): Asian Values versus Western Values – a False Dichotomy

Gudrun Krämer (Freie Universität Berlin): On Difference and Hierarchy: Islamic Debates about Equity and Equality

Averell Schmid (Harvard University, Boston): Torture during the War on Terror: A Story of Contestation

Robert Horvath (La Trobe University, Melbourne): Nationalizing Human Rights in Russia

Comment: Susanne Buckley-Zistel (Universität Marburg)

Panel IV: Human Rights and Scholarship

Chair: Nina Reiners (Universität Potsdam)

Annette Weinke (Universität Jena): History und Transitional Justice – A Troubled Relationship

Matthias Koenig (Universität Göttingen): Between Distance and Engagement – Human Rights in the Social Sciences

Heike Krieger (Freie Universität Berlin): From Euphoria to Skepticism: Human Rights Discourses in International Law

Comment: José Brunner (Tel Aviv University)

Observer Statements

Carola Sachse (Universität Wien)

Michael Stolleis (Max-Planck-Institut für europäische Rechtsgeschichte, Frankfurt am Main)

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