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The Relationship between the Globalization of Human Rights and the Territorial Protection of Civil Rights

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Słowa kluczowe: globalizacja, prawa człowieka, prawa obywatela, granica, przestrzeń, Arendt

Abstract

The main aim of the article is to show that in the globalized world, the axiological and anthropological dimensions of human rights do not fit together. Such tension – between universally understood human rights and territorially perceived citizens' rights – is unavoidable. By making the term "human" strictly biological, people are not perceived as members of a particular community but as members of the human species. In the political paradigm, these collectivities are distinguished by political rules; in the biological paradigm, they are perceived as natural. In this situation, from a biopolitical perspective, the life of others (non-citizens) in effect ceases to be treated as a human life or as a life associated with any ethical requirements, because the normative dimension that metaphysics, religion or politics give to the notion of being human has been excluded. Hence, from the biopolitical viewpoint, human rights cannot be enforced with the same effectiveness as laws enforced under state jurisdiction. They constitute an ethical norm by which the international community judges a given procedure, rather than an enforceable legal norm. In order to justify my reasoning, I will refer to the two philosophically important categories – space and borders – that play a vital role in understanding the processes of globalization that affect the legitimation and enforcement of human rights.

Introduction

Due to the processes of global interdependence, there is an increasingly visible difference within states between the postulated universalization of human rights and the protection provided by locally anchored civil rights. At the international level, this tension becomes even more visible. Human rights are deprived of the state's protection, while civil rights are secured within the state's borders by legal and political mechanisms. Human rights are incorporated into the order of international law as fundamental rights. Due to their status, human rights are not enforced with the same effectiveness as the public laws within state jurisdiction and instead constitute an ethical norm by which the international community judges a given act (Donelly, 2013). Consequently, in the processes of globalization it is worth analyzing how space and borders affect the understanding, legitimation and enforcement of human rights. I will investigate this problem here in three steps. First, I will analyze the relationship between borders and globalization. Then, I will discuss the limits of political power in the legitimacy of human rights. Finally, I will point out the resulting problem of the legitimacy of human rights in a globalized world and the tensions between human and civil rights.

Globalization and the blurring of borders

The postulate for the protection of human rights regardless of an individual belonging to any particular political community is being strengthened, along with the expanding process of global interdependency (Osiatyński, 2009). This process of globalization, unlimited only in its economic dimension, can be distinguished primarily by its spatial dimension. I do not intend to discuss the components of globalization comprehensively; instead, I will demonstrate the new understanding of the relations between space and borders which has emerged due to the process of globalization that subsequently blurs political borders. The blurring of borders that we are experiencing – through tourism, economic migrations, flow of capital, etc. – allows us to discuss a new experience of the connection between politics and space (*topos*). Cooperation among political and non-governmental organizations transcends territorial borders of states,

creating globalized public opinion (Habermas, 2001; Scholte, 2005). At the same time, states' respective political power has been weakening and has been dominated by the power of capital[1], which also faces consequences from losing the protection of human rights.

When considering the interactional aspect of globalization, thinkers and scientists typically describe the experience of compressing the world, of shortening distances, of densification, or of the post-political implications (Giddens, 2003; Castells, 1996). However, globalization as a phenomenon originates, in my opinion, from the need for faster cooperation in the trade and finance sectors. This in turn has resulted in a more uniform system of political economics, in which state markets are subject to integration and unification, creating one global market governed by depersonalized regulations.

A globalized world also requires the reorganization of time and space, creating a new local and global configuration (Wnuk-Lipiński, 2004). A new "hyperreality" is formed: a reality related to us through electronic media and social media, which together create self-referential systems that are determined by their own constitutive impact (Baudrillard, 1996). Such a reorganization of time (the possibility of constant communication) and space (shrinking a distance not only in the physical sense but also in a sense of quickly hearing what is happening in a different part of the globe) has resulted in a shift away from the local, territorial dimension of politics.

This is how all kinds of borders are starting to disappear: the border between the private and the public, the borders between states, and the border between the authority and the individual. Through these processes, communities lose their political character as entities, and their territoriality. Due to the achievements of modern technology, this also allows for the association of people from distant ends of the political space to be linked. In this case, the classical paradigm in political philosophy is connected by two main features of the modern state: both the territory itself and power over the territory become redefined by globalized multidimensional processes (Pogge, 1992; Held, 2000).

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[1] Lastly, due to US-China economic confrontation, we observe some tendencies of more political control over capital (Yongding, 2018); however, at this moment, it is hard to say how far this confrontation will go.

This is also followed by a clash between globalization – a new notion in political dictionaries – and universalization – an old one. Globalization is something we experience, suggesting a transformation in the world that is occurring without our participation or effort; it is an unintentional, unpredictable and unexpected result of human activities. On the other hand, universalization is a mission, a horizon marked by humanity. Sometimes, researchers equate these two processes (Robertson, 1992). However, globalization, instead of generating universalizing forces, leads to actual displacement and a counterforce movement, creating more tension and radicalization (Khosrokhavar, 2014). We can observe the disintegration of one metaphysical world into many small separate systems (Lyotard, 1997). Furthermore, this happens without control, as the authority bound to the spatially located state does not grasp the processes of globalization.

In the past, a network of institutions protected and defended the ethical standards of individual rights and duties. However, along with modernity and capitalism, entrepreneurs slipped out of this network of institutions and settled in no man's land – they were free from norms and obligations. They established these themselves, passed principles and decided upon their obligations. Specifically, they could devote themselves entirely to the pursuit of profit, having no regard for the fate of others. Thus, the processes of globalization are currently causing the situation to be repeated, where the institutions of the "old regime" cannot prevent the disintegration of social bonds and the breakdown of the social order. This, however, does not occur in no man's land, but concerns the existing political entities. The earlier type of undivided Westphalian sovereignty is transforming into a post-Westphalian order, and the protection of absolute sovereignty in a globalized world is becoming a difficult if not impossible task. The balancing of revenues and expenditures, the efficient protection of borders and the creation of stable and recognizable cultural identities are the three fundamental elements of sovereignty – economic, military and cultural – on which sovereign power is based, and at present these are impossible to maintain (Polanyi, 2001, pp. 54–63).

The new method of gaining power over space, instead of colonialization in the style of the nineteenth century, occurs through economic dependence. The principle of the free turnover of goods and the abolition of customs, barriers and import taxes is much more rational and less expensive than territorial conquests. Today's independent states increasingly resemble

entities that fundamentally govern by maintaining order, public peace, and compliance with traffic regulations over extended territories (Amsterdamski, 2004, p. 62).[2]

From the analysis of the process of globalization, it is possible to conclude that the strategic objective, as a reaction to globalization, should be the repossession of economic powers that, after all, decide on the human capabilities of meaningful actions. Democracy, in its present shape – namely, one that is tailored to nation-states – cannot cope with this problem, just as today's democracy cannot be an enlarged version of past local governments in order to aggregate the critical mass of legitimization. Thus, in order to better protect global human rights, some authors postulate the need for a new social force, as well as a new paradigm of thinking (Fabre, 2016; Valentini, 2011).

Meanwhile, looking at new ways of taking control of space in a globalized world and at the attempts to control these processes through a democratic mechanism of authority on a supranational level, it is necessary to distinguish the various spatial aspects of justice, which will allow us to demonstrate how globalization processes influence these aspects. First, it must be said that thinking about justice as the observance of fundamental rights, including human rights, has always been somehow localized (Osiatyński, 2009, p. 54). Two such fundamental spatial localizations can be identified in which justice can be implemented: (a) the territorial space under the authority's jurisdiction and (b) the limited political space of the state.

Globalization combines these two spaces, blurring the borders between them. The limited space in which national law applies is pressurized, both from below and from above. In the former, the space of state authority is strained by privatization and the domination of the private over the public. In the latter, the state is weakened from above by both economic entities and rival communities. In this way, the state loses its sovereign control over the economic, military and cultural spheres. In order to prevent the loss of sovereignty, states have opened the boundaries between power and citizens, controlling the private sphere. This results in the formation of

[2] According to *World Migration Report 2020*, in 2019 the number of international migrants globally was 272 million people, meaning that only 3.5% of the world's population had left their country of birth (McAuliffe, Khadri, 2020, p. 21). Hence, the abolition of capital constraints is accompanied by the restriction of the flow of people.

networks of private and non-transparent relationships; the outcome of these processes is a loss of security, which is related to the private sphere and is protected by law. Moreover, the sense of security is not so much the result of the fact that there is a law protecting the private sphere, but above all from the belief in the effectiveness of its enforcement. The laws themselves do not guarantee this stability and security. It is their protection that allows people to feel at home in the country. Meanwhile, territory, power and the public sphere have lost their mutual connections, and as a result, people have lost their security. Consequently, modern calls to respect human rights and to report their violations – once the areas of law, space and power have been separated – are by necessity impossible to fulfil. In the following section, I will demonstrate the weaknesses of human rights that result from this process.

Human rights and the borders of political power

Since modern states have existed, power itself has been described territorially. Power can be exercised in a given area, outside of which it has no jurisdiction; the power stops at the state's borders. Another type of border, which is also tied to modernity, is the border between the authority and the citizens. Montesquieu in *The Spirit of Laws* wrote:

> Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power. But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go.
>
> (Montesquieu, 1899, p. 150)

This demonstrates that authority, in principle, is restricted and controlled by a sovereign people. Thus, in my opinion, it is precisely thanks to this type of border – the border between the authority and the individuals – to which we owe the formulation of human rights.

It can also be said that the first French declaration of human rights (*The Declaration of the Rights of Man and of the Citizen*, 1789), made at the end of the 18th century, marked a turning point in history; since then, the source of law was to be the individual and not the cosmic order or

historical tradition. As Arendt correctly points out, the declaration "indicated man's emancipation from all tutelage and announced that he had now come of age" (Arendt, 1962, p. 290). Indeed, she claims this declaration was thought of as the desired protection of these individuals, who were no longer protected by their belonging to a state, by their right of birth or by their equality before God as Christians. The new society, made up of people who had been deprived of all rights, was not protected either by tradition or by religion, and searched within human rights for borders that would outline an inviolable area both for the authorities and for other individuals. Human rights, recognized as inalienable, did not need the authority for their protection, nor did they need the law, as the law itself had to be based on them.

In practice, the issue of human rights was quickly and inextricably linked to the problem of nations becoming independent. Today, it is difficult to say if the idea of the sovereignty (thus self-determination) of the people was the source of the postulate for the self-determination of the individual or *vice versa*. At the same time, along with both of these postulates – collective self-determination and individual self-determination – a problem emerged concerning the border between the two. In the political sphere, collective self-determination has been recognized as a condition for the efficient protection of the rights of the individuals who make up the people. The sovereignty of the nation began to be perceived as the source of protection of human rights. Humankind has been described in the likeness of a family of nations, and since the French Revolution it has become clear that human rights have been identified as national rights – perhaps not so much theoretically as, above all, practically. In consequence, human rights have only been protected by civil rights, and the individual has become fully human only by being a citizen; this triggers a series of national liberation movements and somewhat distances the theoretical issue of the protection of human rights other than through citizenship in a given political community.

Unfortunately, this has brought about two negative consequences. Firstly, it reveals those who are deprived of citizen status (the problem of stateless people), and thus those who are also deprived of the human right to own a home. Secondly, it reveals those who have lost not only the right to property but also to protection from the political community, which existentially means that they have lost the place to live, their homes. However, it must also be added that what is unprecedented is not so much the loss of one's home as the impossibility of finding a new one.

As Arendt claims: “Suddenly, there was no place on earth where migrants could go without the severest restrictions, no country where they would be assimilated, no territory where they could found a new community of their own” (Arendt, 1962, p. 293). It was, therefore, not a problem of overpopulation, but of political organization. The other loss concerns legal protection. It is not the fact that people are unequal before the law that harms them, but that there are no laws for them; it is not that they are being persecuted, but that nobody wants even to persecute them; no one treats them as legal persons or as persons who have any rights.

Back when the world was still an “open space” that could be developed, the lack of a home did not constitute such a problem. However, as a result of colonization, conquests and rivalry between states, the “free” space disappeared, and people who were deprived of civil rights in practice lost the possibility of owning a home anywhere. In the process of globalization, people began to live in one world. In this situation, the proclamation of human rights has been acknowledged as being independent from history and privileges. Every human has been recognized as being worthy of protection. This independence has created a newly discovered modern idea of human dignity, and humanity, understood as all the people who inhabit the earth, has become fact. In this new situation, the newly defined humanity signified that the right to have rights or the right of each individual to belong to humanity should be guaranteed by humanity itself. Thus, the postulate appeared concerning the protection of human rights being independent from political belonging (Freeman, 2004).

What is striking, after having introduced the idea of human rights, is that both the newcomer and the enemy have the same rights, of which they cannot be deprived. Therefore, a problem arises: how does one treat enemies, and when is it possible to stop respecting human rights? However, before WWII and the Holocaust led to these questions, another reorganization of borders had previously occurred in the 19th century, introducing many regulations concerning the treatment of newcomers and warfare into international and national law. As a result of the implementation of the postulate concerning collective self-determination, state borders also became national borders. The stranger was no longer only a stranger in the legal sense, being a citizen of another state, but also became a stranger in the ethnical sense, being a member of another national community. Each time, however, what we observe is the marking of a border, a division between us (ours)

and them (strangers), and it is only this division that then introduces the political order into the world: a measure, law and justice (Schmitt, 1996, pp. 54–61; Mouffe 2005, p. 126). Such situations happen because, thanks to the ability to create impassable borders between various forms of activities, spheres of reality and types of existence, it is possible to identify the space within which politics emerges. Politics – or in other words, political reality – is separated by the demarcation of borders. It is only then that a common world emerges that is commonly experienced and perceived, with a common language, cultural codes, meanings and features that make the legitimization of a given political order possible. Public space appears as a sphere where, as Aristotle claimed, citizens recognize each other as equal and free (Aristotle, 2013). This equality, however, concerns civil rights and is not an anthropological equality that results from the fact of being born a human being, thus being endowed with human rights. In the next section, I will examine such tension in more detail.

Between the *zoe* and *bios* of human rights – a problematic tension[3]

In a non-transparent world of overlapping orders and values, and the blurring or disappearance of borders, many authors argue that only laws that are universally recognized have strong legitimacy (Habermas, 2001). If we look at human rights from this perspective, we can question problems related to their international enforcement.

Following Arendt's considerations in *The Origins of Totalitarianism* (Arendt, 1962), we can say that there is no supranational institution that could enforce the same effective respect for such rights against every human being as in their respective states. We see this today in many cases, especially those involving the protection of refugees. It can be said, following Arendt, that international law has its source in agreements between states, and it is the states that agree on what kind of obligations will be implemented. As she herself writes:

[3] Excerpts in the next part of the article are partly based on a few modified paragraphs from the book: *Human and Citizens Rights in a Globalized World* (Gawin, Markiewicz, Nogal, Wonicki) from pages 190–195, 198–202, 225.

> This new situation, in which "humanity" has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible. For, contrary to the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organizations, it should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and, for the time being, a sphere that is above the nation does not exist.
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> (Arendt, 1962, p. 298)

Thus, the objection of human rights defenders wishing to identify and overcome weaknesses within human rights is that they are not effective in protecting people who have lost everything except their affiliation with their species. The ineffectiveness of human rights is primarily due to the fact that they do not eliminate the problems generated by the existing political and legal order. Within this order a person may be granted rights, not because they are a member of the species *homo sapiens*, but because they have been recognized as a member of a certain political community. Thus, despite the fact that human rights derive their normative force from aspects that are pre-political or metaphysical, among others, their inclusion in the current state-centered system makes it difficult to defend those who have been, for various reasons, excluded or ousted from their own political community and reduced to the level of the *zoe*.

In addition, while the concept of law has its positive character, the concept of "man" refers to the Enlightenment ethical concept in which people, due to their essential characteristics, should be treated with dignity. Humanity, however, has such a character only within the framework of a specific metaphysical and ethical doctrine. Seen from the perspective of the natural sciences, human beings belong to one of the many species that inhabit the earth. Already by referring to "every human" (understood as a species), these laws seem to be rooted in nature itself and try to relate to natural laws as well. Thus, human rights are considered to be fundamental and universal[4], while the rights of the citizen, from such a point of view, seem

[4] The concept of human rights is open to interpretation. This can be seen in various attempts to justify human rights in such a way that they have a universal character, i.e., to show that they are valid on the basis of any religions, ethical systems or political

to only be a certain temporally and locally defined variation on them. In this perspective, spatial conditioning is generally treated as important only for the rights of a citizen, related to the geographical location of a given state, its system and laws. Consequently, it is also worth realizing that human rights do not function outside space, and hence a problem occurs with their enforcement in situations in which failure to comply with them causes a threat to life or real death for many people.

Therefore, in reference to Agamben – who is currently the best-known researcher using Arendt's ideas to develop a reasoning that reveals the internal tension between *bios* and *zoe* in human rights – I would like to subsequently demonstrate the difference in the theoretical status of human and civil rights. The former are ethical and not related to a specific place,

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cultures in the contemporary world. Of course, finding a justification for human rights that meets the universality condition is not easy. Nowadays, human rights are often thought of as a component of international law, which in fact corresponds to the intention to adopt and establish the Universal Declaration of Human Rights in 1948. In this interpretation, their purpose is to set standards that are expected to be adhered to by all countries. The role of human rights is to identify the conditions that a state must fulfil if it wants to enjoy the right of self-determination. On the other hand, human rights can be understood as setting a goal to which all nations and states should strive. Here, human rights should then constitute an ideal of a just political system. In this sense, a country that is unable to achieve this goal will not necessarily be viewed as invalid, especially if the failure is due to the poor economy of that country. Another popular strategy for justifying human rights is the practice-based strategy. This does not require a search for the deep philosophical foundations of human rights; instead, we should analyse our practice related to these rights, i.e., the various declarations and conventions and how they function in international law, in the foreign policy of governments, etc., and based on this, derive the theory of human rights. Another quite popular strategy used, for example, by Rawls, is the overlapping consensus strategy. It assumes that different worldviews overlap in terms of their core values, which legitimize one universal list of human rights. In this case, unlike the previous strategy, human rights would have a philosophical basis, but for different people it would have a different form, depending on the values they profess. The final common strategy is to look for a foundation of rights in the properties of human beings as such by referring to, for example, basic human rights (Shue, 1980) or the idea of capabilities (Nussbaum, 1992). These properties, according to the supporters of this approach, must be considered morally important by all people regardless of their particular, religious or secular beliefs. In this approach, human rights are justified by showing that they provide the conditions necessary to meet these needs (or, according to other versions of this view, to realize certain human abilities). For more, see: Miller, 2007, Beitz, 2011.

and the latter are political and related to a specific territory – this tension can therefore also be interpreted as an internal contradiction of these laws, which arises through the collision of a limited and therefore defined space and a global space – that is unlimited and undefined.[5] Secondly, with the current growing processes of globalization, which blur the political boundaries, and the clear scope of the authority's powers, the protection of human rights has been more difficult.

Due to the aforementioned description, two different types of problems concerning human rights arise and need a more comprehensive analysis:

(A) The problem of reducing human life to *zoe*: treating life itself as the subject of laws constitutes a potential danger of reducing human rights to naturalized life; that is, a life that is external to politics.

(B) The problem of the deterritorializations of human rights: they cannot be implemented within the framework of the state's political order because being a subject of the law results from belonging to a specific political community and not to the human species.

Below, I will more systematically investigate these two interrelated problems.

[5] At this point, it is worth supplementing the description of the relationship between human and civil rights. First of all, it is necessary to stress the difference between human and civil rights and positive law. Although the relevant declarations and international pacts are written in legal style, their translation into legislative practice is not obligatory. In this sense, these documents do not constitute a United Nations, as there is no mechanism for verifying the compliance of domestic law with human rights. The signing of the Universal Declaration of Human Rights and the ratification of international pacts only constitutes a declaration of will to carry out interpretative work at the legislative level to bring national legislation into line with human rights. These rights become the target of political actions to guarantee a dignified life for every human being. Therefore, on the other hand, there are comparisons of human rights to the constitution, which are made based on the claim of human rights to define the general axiological framework of the legal and political order. In other words, human rights could perform a function similar to that of national constitutions, but there is at least one feature that distinguishes them from such constitutions. Human rights claim universal validity, while state constitutions, even if they refer to essential values, regard them as essential for a given society, but not necessarily for humanity in general. Apart from the aforementioned difference between human rights and constitutional rights, there is another critical problem concerning the relationship between human rights and civil rights: civil rights are anchored in the state order, which is based on the territorial, population and legislative boundaries, and the state is the source of their inclusion. By contrast, human rights demand universal inclusion.

Ad (A). From the perspective of making biological life a subject of rights, it should be noted that the concepts of life and law remain in conflict with each other. Life gives rise to certain regularities that researchers of the natural world have tried to describe (Wilson, 1975). Conversely, the concept of law has a completely different character. Here, it is the political community that creates a space within a person to recognize their legal status. A legal personality abstracting from biological reality can become a source of equality. While sources of power other than political authority can be imagined within metaphysical or religious systems, today these sources are questioned if these doctrines are not universally recognized, and numerous authors have outlined that the strong and widely recognized justification for human rights refers to pragmatic or utilitarian argumentation. Consequently, conflict arises between the concept of a human being as an integral element of nature (human rights) and a human being as a politically constructed subject who begins to take on attributes such as individuality, freedom, equality and reason in a process of mutual recognition in the public space (civil rights).

It is for these reasons that the category of humanity, understood as belonging to a given species, encounters difficulties. It also raises doubts about the validity of distinguishing the "human" species and its protection. Moreover, humans, as purely biological beings, lose through reduction the qualities given to them by metaphysical or religious systems. This is one of the reasons why it is more difficult to destroy the legal personality of a criminal – a person who takes responsibility for their actions, with consequences that determine their fate, but who remains a member of a given political community – than that of a person who has been denied political belonging and thus has been refused the right to responsibility for their actions. In other words, while not being part of a political order, one becomes only an element of nature that is normalized only from a metaphysical or religious perspective (Finnis, 1983).[6]

[6] I think that this problem is best illustrated by the situation of stateless persons described by Arendt – people who, for various reasons, have been stripped of full legal protection and have been excluded from the political community. In the first half of the 20th century, many were members of national minorities who had resided in a given country for a long time, even for hundreds of years. Thus, on the one hand, members of nations, and only they, had been granted certain political rights; on the other hand, minority treaties were to contribute to a certain political and legal inclusion of groups who had been refused civil rights. In practice, it has turned out that legal protection without civil rights is simply

However, there is no essential quality in nature that can distinguish humans as humans. An example of this process is treating community life as real or authentic, as opposed to bare life, which is merely a biological phenomenon. At the same time, the only mechanism of "equalizing" one's status may be an external threat and the feeling that other communities can also categorize life in this way. Regardless, it has a similar effect – only that life can be protected, behind which the violence of the community stands to protect it. Thus, we can recognize others to a certain extent, but only as long as they have the appropriate tools to guarantee respect for strangers in their own community. This may, for example, lead to the recognition of certain minority rights, but only if they are in fact protected by the strong position of their country of origin. Life without such support loses all value and, as Agamben argues, becomes unprotected (Agamben, 1998, p. 78).

To show this, Agamben divides the concept of existence into the political dimension – *bios* – and the natural – *zoe*. *Zoe* is the life of a human being understood as a biological organism. All activities related to this sphere of life result directly from natural physiological needs. On the other hand, *bios* refers to functioning in a political community, a life to which one can ascribe features other than those resulting from the physiology of the organism.

At the same time, it is the *zoe* in Agamben's theory that is at the center of political decisions. He argues that the decision to include bare life, excluded from social structures, in the legal system is the basis of politics. Agamben, after Schmitt, analyses the mechanism of the influence of power on the *zoe*, but in opposition to Schmitt he refers to the Roman figure of *homo sacer*.[7] As a result of their exclusion from human and divine rights, the life of the *homo sacer* was reduced to biological functions, and they could be killed with impunity by anyone. Agamben also sees the essence of law today, including human rights, in this "exclusive inclusion" (Agamben, 1998, p. 21).

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inefficient, as the contemporary crisis with migrants in the EU reminds us. For a state based on nationality, this constitutes a serious problem. In principle, a state of this type has only two solutions at its disposal for dealing with migrants: it can either assimilate them or deport them. However, a large number of migrants make assimilation and repatriation much more difficult, for reasons of a practical nature (Arendt, 1962, p. 292).

[7] In Rome, the status of *homo sacer* was imposed on citizens only for the most serious crimes. The punishment consisted in excluding the convict from the system of law – everyone had the right to kill them without legal consequences (Agamben, 1998, pp. 71–74).

In his opinion, the essence of the law in modern countries is based on the institution of the state of emergency indicated by the sovereign's authority. The state of emergency is defined by Agamben as a situation of suspension of the relation of the norm to reality, incorporated into the legal system as an exception to the rule (Agambe, 1998, pp. 26–29). Agamben does not refer to specific regulations concerning the state of emergency. The concept he uses refers to a situation where the legal system of a group of entities is legally suspended, in effect reducing certain individuals to a bare life. These units are subsequently excluded from the binding system of rules.

The state of emergency is also a necessary institution in the sense that it determines the scope of the law and the exceptional situation of its suspension. The sovereign will decide if the suspension takes place and, if so, which area of the law is suspended or what group of people is exempted from the binding law. It is the sovereign who has the power to give and take away the meaning of legal regulations. According to Carl Schmitt, to whom Agamben refers, the essence of sovereign power is based on states of emergency. The essence of power lies in the decision to cross the boundary between the normal state and the state of emergency.

Thus, the network of dependencies presented by Agamben consists of several elements. First, the legal system contains the inherent establishment of an exceptional situation, during which the normal rules cease to apply to the facts. Under a state of emergency, citizens are reduced to bare life. Another important point is that the decision to apply the exception is purely political. It is the will of the sovereign that determines whether or not a norm is granted a binding status. The sovereign has the power to shape the position of humanity as included in the legal space, and therefore in its political counterpart, or decide if it is excluded from the legal order and community. Finally, it is worth emphasizing that under the state of emergency there is a relationship between individuals' bare life and the law. According to Agamben, this relationship is primary and inevitable within the legal systems of Western countries. Thus, the exclusion mechanism is key to understanding the contemporary dimension of the figure of an alien, one who is excluded and deprived of rights, such as a refugee.

On the basis of the analysis carried out, it can be concluded that one of the weaknesses of the idea of human rights revealed by the biopolitical perspective is primarily based on the tension between the biological and metaphysical order to which the concept of being human relates. In practice,

such tension results in the emergence of more and more groups of people who are denied their citizenship. This brings them down to the level of mere members of the human species, and consequently exposes them to serious danger of repatriation, forced assimilation or extermination, which happened during WWII. Such a danger is most visible when these people become recognized by society as a threat, regardless of whether these beliefs are justified.

Ad (B). Additionally, when discussing the impossibility of implementing human rights, this difficulty is particularly noticeable when considering people who do not possess citizenship. In this case, the conviction that the state creates a legal space that obligates all people who remain within its territory becomes inaccurate. Certain people can be identified as people not included in the system of the law. Those who do not manage to obtain a legal status because of existing members of the state may create a problem for the political community and can be placed for example in refugee camps (Agamben, 1998, p. 181).[8]

How, then, should human rights be understood in the context of political communities? First, the helplessness of the *Declaration of Human Rights* should be noted, which seems ironic given the fact that it is these most vulnerable people who are to be protected by these rights. As stated previously, biology is not a "natural" nor an easy basis for establishing equality among people (nationalism and racism are two obvious examples). On the contrary, from classical political philosophy, only a person designated by law can become the subject of rights. Hence, the only way all people can acquire legal personality is through the emergence of humanity as a global political community under the leadership of a world government (Held, 1995). However, we have no guarantee that such a possibility will become true, nor is it certain whether such a world government would protect everyone. This is because humanity does not create a community based on shared bonds and it is hard to imagine that this will change. It is therefore possible that abstract humanity under the leadership of a world government would make decisions that discriminate against minorities, for example, in the name of security.

[8] Humanitarian organizations often make use of the image of refugee camps, treating this as a tool of emotional persuasion and pressure, but not as an ethical summons or obligation. However, humanitarianism, despite its intentions, supports the process of the segregation of bare life, as it introduces the problem of bare life into the public space, which leads to its segregation from political rights.

An even greater danger seems to result from the opposite situation – that is, the transfer of regularities typical of nature to politics. After all, biology is a field that is necessarily related to the laws that govern nature. Transferring these laws to politics, where the field of action is based on opinions and the ability to act to identify people as citizens, can result in phenomena that people have already witnessed in the past: when biological regularities are presented as a necessity that eliminates free debate and consensual decisions.

Thus, we come to the paradox resulting from the recognition of human rights by modern states that it is stateless persons, constantly threatened with exclusion, who most fully represent the problem of human rights. This is because, to some extent, they experience the fate of "natural" human beings in a political reality that does not grant them rights. Human rights declarations were made in response to atrocities carried out by the authorities, and in this sense, the intentions of human rights defenders after WWII were directed against the violence of the authorities. Since these declarations are inherently reactive, they emphasize precisely the object of sovereign power, namely "bare life". Thus, as long as the form of sovereign biopower remains in force, there is no place for the full realization of the goal of protecting humanity from the violence resulting from the mechanics of power. This goal will certainly not be achieved in a situation in which human rights declarations are ratified by sovereign states as part of international law. The problem is based on the fact that the concept of "legal personality" does not refer to the biological order, but to the legal framework. Out of necessity, the entire international legal mechanism has also been based on establishing a relationship between having a legal personality and being a member of a given political community.

This understanding of legal personality conflicts with the understanding of human rights that were granted to people as human beings after the experiences of WWII, irrespective of their nationality, gender, race and other characteristics. In this way, human rights law has been primarily established as a protective system in order to eliminate genocide in the future. Another reason for the creation of the UNHR was the huge number of stateless persons, as these persons were not entitled to legal protection from any state. Hence, the Declaration of Human Rights, adopted in 1948, did not distinguish between the status of human and citizen, but incorporated life as such into the legal space so as to prevent exclusion.

The emergence of sets of rights addressed to humanity as such was a completely new way of describing bare life in the legal system. Human rights were created to protect individuals who, by law, cannot invoke anything but the very fact of life. Therefore, Agamben after Arendt sees in human rights law another attempt to include what is excluded from the political and legal space. Such a structured system of regulations concerning exclusively bare life can be used only in the space of exception – thus in extreme situations, when it is no longer possible to invoke one's position within the legal system of a given community from which persons have been excluded. It is only in such circumstances that human rights gain their importance, but they can also be disregarded, as has been seen in the case of refugees wishing to cross the Mediterranean to Europe in the last ten years. These immigrants are the best example of individuals who are entitled only to rights resulting from the very fact of being human.

These examples also show us that the scope of human rights' workability is limited to people who have the opportunity to assert their rights within the legal system of a specific community, and non-governmental organizations are the first to defend themselves the rights of individuals who can only invoke the very fact of being a "bare" human being. These organizations decide on their own whether to intervene. Therefore, no one is responsible for their inaction, as a result of which the rights of people excluded from the legal system of the state are violated. States do not bear the political consequences and liability for not reacting to the deaths of people who are not protected by the political communities they belong to. The situation is in principle different if the rights of an individual who is entitled to state protection are violated. In this situation, according to standard circumstances, the possible consequences of violating the rights of a citizen may cause real harm to the perpetrator.

Moreover, Agamben convincingly shows that the activities of humanitarian organizations contribute to the separation of individuals reduced to bare life from their political rights by limiting aid to meet the physiological needs of these individuals (Agamben, 1998, p. 78). Thus, it is impossible for excluded individuals to be effectively incorporated into the political community through human rights.

Summary

If this analysis is correct, it seems to me that with today's institutional world shape, it is not easy to strengthen the international protection of human rights. However, regardless of whether we agree or disagree with this diagnosis, my task was primarily to show the irremovable and frequently seen tension between human rights and citizens' rights resulting from the mixing of the political space with the ethical space, as well as limitlessness, universal and a-territorial human rights with the territoriality and contingency of civil rights. The latter's spatiality comes into conflict with the postulated universalism and globality of the former. Moreover, the universalism of human rights based on biology cannot be described without reference to certain metaphysical, axiological and normative concepts. These, in practice, are not universally recognized. In international relations, this often means that one can meet with resistance from other ideologies or world views. Such an effect appears in part because, as previously outlined, the spatially localized human rights have caused difficulties since they were articulated and promulgated. Although they are treated as basic and universal, they "exist" as long as they are, on the one hand, recognized by people and, on the other hand, included in the legal order. However, they can be challenged or even invalidated on the basis of legal rules applicable in a given politically defined space. At the same time, globalized interdependence blurs the political boundaries within which human and civil rights can be effectively enforced. Human rights are becoming centered in the state, but citizens' rights are beginning to transcend national borders. This creates competence and executive problems, triggering criticisms of human rights (Freeman, 2014)[9].

While the concept of law is positive, the concept of humanity refers to the enlightenment ethical concept in which people, due to their essential features (such as rationality), are and should be treated with dignity (Kant, 2006).

[9] Unfortunately, at present, the protection of human rights and, more generally, the process of implementing human rights leaves much to be desired. An attempt by the UN to take an unequivocal position in a situation of human rights violations often encounters resistance resulting from the political strategies of individual member states. The UN peace keeping force does not have specific competences and in practice the presence of "blue helmets" is not enough to resist real human rights violations.

Humanity, however, has such a character only within the framework of a specific metaphysical and ethical doctrine. Seen from the perspective of natural sciences, humanity is subject to reductionism and involves belonging to one of the many species that inhabit the earth. Such a biological reference does not allow a universal grounding of any normative concept related to human rights. The biological perspective, when exposed, reveals the inequalities that result from the very nature of human existence. Importantly, the natural existence of man, which boils down only to the fact of biological life, is natural for all people in its inequality. Thus, one cannot rely on natural existence to claim that all people are equal by nature. At best, one can try to defend the universal equality of "constructed" subjects of human rights by referring to the initial inequality, where people are understood not only as biological beings, but also metaphysically or legally as equal beings with equal status. This reasoning uncovers an important *aporia* of human rights: their helplessness is not dictated by random factors, i.e., a given division of powers; rather, a structural helplessness exists in the very category of human rights.

Finally, if the tension between the biological (*zoe*) and normative (*bios*) dimensions of human rights has been rightfully and convincingly described and does indeed play a role in limiting the global protection of human rights, than the legitimacy of human rights cannot happen without a philosophical analysis of these rights and their relationship to civil rights and international relations. This perspective allows us to notice that, in order for human rights to fulfil their role, it is necessary to solve (at least) the two problems indicated in the third point of the article. The first problem concerns the lack of a clear and satisfactory solution to two particularisms: pre-political (biological and economic) and political. The second problem is related to the divergence of human and civil rights, which occurs along with globalization, blurring borders and the tensions it causes. These two issues are especially visible in international relations when refugees appear, in ethnic purges or in other activities that threaten the existence of people. It seems that the current situation requires clarification. The two most obvious alternatives are: (1) by departing from human rights an attempt will be made to return to the order based on a balance of power or (2) the international community will make a genuine attempt to implement human rights, which, however, would imply questioning state sovereignty in its current form. However, neither

solution is as simple as they appear. From this perspective, the search for the possibility of harmonizing the internal structure of human and civil rights is the first step in finding solutions that could lead the international community to a new, hopefully more peaceful, world order.

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