

Mahlmann, Matthias: Mind and Rights. The History, Ethics, Law and Psychology of Human Rights. Cambridge: Cambridge University Press 2023. Open Access: DOI:10.1017/9781316875520, xiv, 500 pp. ISBN 978-1-107-18422-0 (hardback), 300 pp. £ 110.00. ISBN 978-1-31688015-9 (eBook), \$ 44.99 USD

As I write these lines, the world in which we live is going through a complex moment of violence that is cruelly destroying life and threatening the peace and the international legality of human rights that have been built up since the second half of the 20th century. The human aspiration of non-repetition underpinning this system, which in some contexts came alive as a promise of “never again” in the face of atrocities during that century, seems to be disappearing.

For those of us who advocate for the Law as the antithesis of war, it is sometimes challenging in current times to justify and promote among the new generations, whether in classrooms or in texts, those mechanisms that are currently in a sort of *impasse*. While human rights have always been at stake, throughout history and across the globe, this is a particularly important moment. Perhaps, as never before, some of the most defining paradigms of Western societies are seriously questioned and become signifiers, prompting us to reimagine them: democracy, economic development, the Rule of Law, the common good [...] it is then when a convincing notion of human rights becomes urgent.

I write from a place where it is impossible to think or speak about human rights without recalling the recent genocide of the Mayan people during the civil war (Guatemala, 1980s). This terrible event took place in the same century that witnessed the genocides in Rwanda and Armenia, as well as the Jewish Holocaust. That is why, at this particular moment, I find it very encouraging that Matthias Mahlmann is devoting his talent to this extraordinary work, which will be central to human rights studies, not only from the perspective of international law, philosophy of law or legal theory, but also from an interdisciplinary point of view.

Mind and Rights presents an extraordinary synthesis of thought, drawing on disciplines such as history, philosophy, normative theory, political critique, and the new contributions of moral psychology, cognitive psychology, and neurosciences. It is a work that, from a broader and more complex perspective than that offered by legal theory, invites us to rethink and debate the concept and foundations of rights. From doubting the sufficiency of the epistemological validity of the moral foundations constitutive of the human rights project, Mahlmann embarks on a path of profound reflection through history, normative justification, and the psychological foundations of rights.

Along the way, he makes it clear that in order to take a broader view of the problems, it is important to move beyond closed compartments. He thus invites us to build bridges, both between the various fields of scientific knowledge and between them and the various epistemologies and fields of knowledge that have functional equivalents of human rights, even if they are not explicitly presented in the normative and legal framework we know from Western legal tradition. *Mind and Rights* is in itself a hermeneutic bridge. Its meta-text constantly reminds us of the importance of bridges for understanding among individuals and peoples.

The book is structured into three parts and eight chapters. The first part is devoted to debates on the concept of human rights and their global history. The second part addresses various reflections on the justification of rights. The third and final part introduces the relationship between rights and moral cognition. Three major segments with central lines of argumentation from which fundamental contributions to the theorisation of human rights in the 21st century can be drawn.

The first is that rights have deep roots in history. Mahlmann approaches this idea by problematising history as a linear trajectory of strictly normative achievements, while highlighting a reality of advances and setbacks, disputes, and long pauses in the recognition of rights. Thus, he validates struggles for human rights at different times and places around the world. The author asserts that the history of human rights: “must be the history of often very mixed achievements, of slow and discontinuous developments, of dead-end roads and noble ideas buried in tragedy. It must be a history of ideas, actions and institutions as imperfect as the beings who drove this project forward through time. The fact that there are many unsavory chapters in the history of human rights thus comes as no surprise.” (p. 91).

This conception broadens the view of history by closely linking it to the struggles of individuals who have shaped rights over time, not always through declarations or legal instruments. One of the main contributions of the book is thus the invitation to consider within the debate normative ideas that are not necessarily human rights, but remain important for their history, because, as the author asserts: “they contributed to the formation of those building blocks that ultimately became the material for the explicit concept of human rights” (p. 462). These ideas to be considered by legal theory and historical perspectives can refer to different examples: from legal norms that do not explicitly mention a right but promote it, as in the case of a law that provides for the non-official establishment of any religion, to the content of what people thought and felt during the *Scramble for Africa*, which are ideas that should be taken into account through channels such as oral history, even if they are not formulated in the technical language of an Amnesty Interna-

tional report. In other words, the book invites us to look for the idea of rights in the social practices and struggles of ordinary people throughout history.

From this non-conventional perspective Mahlmann argues the status of human rights as products of history, beyond the significance of history in understanding the foundations of human rights. As a result, he comes to the central conclusion in the first part of the book that: “History is key to the study of human rights but necessarily leads beyond its own confines to the theory of justification and the structural (not just historical) analysis of the faculties of human understanding that open the epistemic door to the cognition of human rights” (p. 75).

In the second part of the text, the author critically analyses normative justifications for human rights. He considers the explanations offered by anthropology, political theory, and normative principles. He highlights the contributions of anthropology to understanding the concept of human goods claimed in the context of rights. From the perspective of political theory, he also discusses the conditions (which are not always sufficient) for the enjoyment of these rights. Finally, he addresses the normative principles of justice, solidarity, and intrinsic human value to support the justification for protecting these goods.

This second part provides an in-depth synthesis of the theoretical debates and empirical tensions surrounding concepts such as moral autonomy or political agency. It also identifies these debates and tensions in explanations of the function of rights from systems theory, the economic analysis of law, discourse and consensus theories, contractalist theories, theories of needs and interests, or capability (opportunity) theory. As he carries out this theoretical deepening, Mahlmann discusses questions to be answered as well as formulates arguments about the justified goods protected by human rights, their place in a political theory and their normative foundations, as he holds: “in order to stand the test of critical reflection” (p. 325).

The third line of argument engages with sceptical approaches from psychology, cognitive neuroscience, and evolutionary theory, to explore their implications for the justification of human rights. While acknowledging the importance of knowing and deepening these debates, Mahlmann introduces his analysis in the interesting discussion of the *mental gizmo thesis*, which describes as follows: moral cognition is part of the dual process of the mind (“thinking fast” and “thinking slow”, to use popular terms). Deontological judgments, as human rights, are part of fast thinking, activated by the ventromedial prefrontal cortex (VMPFC), an area of the brain associated with the production of emotion. There is a mental “gizmo” that yields such judgments involuntarily, unconsciously, as a product of the fast, automatic, and emotional operations of the human mind. These judgments are useful in

certain respects but should be disregarded as general guides for moral judgments because they systematically skew human moral rationality. The mental gizmo thus causes “moral illusions” (in the same way that the Müller-Lyer illusion causes visual illusions). Human rights are seen as products of the mental gizmo, useful as rhetorical devices and exploitable for good causes but without any claim to rationality as such and often quite harmful in their effects. Instead, truly rational moral thinking requires utilitarianism, which is slow thinking, activated by the dorsolateral prefrontal cortex (DLPFC), the cognitive control centre of the brain, and which should ultimately govern human moral reasoning (pp. 336–337). Mahlmann identifies and discusses the internal contradictions of the thesis and thus argues against the critique of rights as *cognitive illusions*, concluding that it is no reason to abandon the projects of struggle for recognition and enforcement of human rights.

In this third part, he engages with a long tradition of reflection that is absent from the deepest contemporary theorisations of rights: that which concerns the psychological underpinnings of ethical ideas, that is, how people mentally legitimise the normative concepts we accept as valid. Deepening practical philosophy’s concern with the mental means by which human beings acquire moral knowledge is one of his major contributions. His dialogue with the sceptical claims and critiques of rights from cognitive psychology, moral psychology, and neuroscience constitutes a novel and powerful angle of vision and discussion. It both nourishes and problematises traditional discussions of the concept and foundations of rights (think about the diverse debates around human “reason and conscience”) because they question the sufficiency and genuineness of the cognitive structures that establish the criterion of the truth of the propositions perceived as true.

In this interesting journey, however, Mahlmann finds promising theoretical approaches to argue that the structure of human moral psychology supports the human rights project. He argues that a sound analytic theory of morality is crucial as a starting point for further theorising about the nature and origins of moral cognition. From there, he upholds, one can attempt to reconstruct the psychological mechanisms underlying human moral judgement. The author concludes that: “Principles of egalitarian justice, of human solidarity, care and respect for human dignity, together with a sufficiently rich concept of human existence and a political theory of the means for human flourishing embedded in a plausible theory of mind and its place in natural history provide good reasons to believe that the idea of human rights is as well justified as anything ever has been in the history of fallible human thinking about morality and law.” (p. 467).

This book is a fruitful starting point for many of the discussions that will take place about human rights in the 21st century. I believe that the book

opens up a number of challenging debates for their substantiation, in addition to the invitation and challenge to “step out of the box” and think about rights beyond the law. One of these, which I find particularly important, is that of the foundations of rights in their collective dimension. The main thread of the book, while clearly acknowledging the centrality of social struggles and thus the existence of international instruments of collective rights (think about the case of indigenous peoples), is based predominantly on liberal notions of the concept and foundations of such a conception of rights.

Nonetheless, the book also offers a variety of ways in which the predominant individual dimension of rights can be discussed and complemented with the collective dimension that is so important for different groups, minorities and peoples all over the world. Firstly, the author defends the idea of human rights as universal, but from a diachronic universalism that opens up and is constructed from a concrete pluralism of rights. Secondly, avoiding the dissociation of human rights and self-determination (the right that underpins collective rights) is a strong idea from the very first pages of the book. Finally, the author defends the need to know the experiences of slavery, colonial invasion and oppression from the voices of the very subjects who are living them and who have lived them. On the basis of these powerful ideas, which the book clearly argues for, it would be interesting to broaden and deepen the debate on the foundations of collective rights, such as the case of the rights of indigenous and Afro-descendant peoples, or the case of cultural minorities, in territories that have lived (and are still living) colonial relations.

Written out of a clear commitment to the principle of common humanity that unites us as readers from around the world, this book deserves not only to be read, but studied and debated. It is both an invitation to dialogue and an invitation to listen carefully. The debates, the reflections and, above all, the arguments that it offers us are tools for the fearless defence of the most fundamental human principles that we share in terms of rights. They are also reasons to commit ourselves to the pursuit of the interesting lines of research that it opens up, as well as to the search for and debate on political solutions to the problems of our times.

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