

## Philosophical Foundation of Human Rights According to Höffe and Lohmann

### *Pedasaran Filsafat Hak Asasi Manusia Menurut Höffe and Lohmann*

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**Abstract:** This article aims to philosophically justify the universality and the existence of human rights. Historically, the concept of human rights has evolved according to the context in which human rights are lived. One of the themes of debate is how human rights are justified or validated and how they can be universally accepted. Philosophers always have different opinions about what constitutes the basis of human rights. This article considers Höffe and Lohmann who sepciafically address this problem. Based on the philosophical approaches of Otfried Höffe and Georg Lohmann, this research emphasizes the universal validity of human rights. On the one hand, Otfried Höffe justifies the necessity of human rights in his anthropological approach of “transcendental exchange” which is the conditions for the possibility of being human. These conditions concern humans as physical and living beings, as linguistic and rational beings, and as social and cooperative beings who have transcendent interests in their lives. On the other hand, Georg Lohmann grounds human rights through a mutual moral obligation to recognize others as equal subjects. Moral obligation arises from a person’s ability to decide what is good or bad. Both Höffe and Lohmann ground human rights on reciprocity. In analyzing both views of human rights, qualitative method is used in this research which focuses on literature study. This research finds that the universal nature of human rights is grounded in human vulnerability, reciprocity of mutual respect, and integration of moral obligations into legal frameworks for the protection of self-determination and dignity.

**Abstrak:** Artikel ini bertujuan untuk secara filosofis membenarkan universalitas dan keberadaan hak asasi manusia. Secara historis, konsep hak asasi manusia telah berkembang sesuai dengan konteks di mana hak asasi manusia dihidupi. Salah satu tema perdebatan adalah bagaimana hak asasi manusia dibenarkan atau divalidasi dan bagaimana hak asasi manusia dapat diterima secara universal. Para filsuf selalu memiliki pendapat yang berbeda tentang apa yang menjadi dasar hak asasi manusia. Artikel ini medalami pemikiran Höffe dan Lohmann yang secara khusus membahas masalah ini. Berdasarkan pendekatan filosofis Otfried Höffe dan Georg Lohmann, penelitian ini menekankan validitas universal hak asasi manusia. Di satu sisi, Otfried Höffe membenarkan perlunya hak asasi manusia dalam pendekatan antropologisnya tentang “pertukaran transendental”. Di sisi lain, Georg Lohmann mendasarkan hak asasi manusia melalui kewajiban moral bersama untuk mengakui semua orang lain sebagai subjek yang setara. Kewajiban moral muncul dari kemampuan seseorang untuk memutuskan apa yang baik atau buruk. Baik Höffe dan Lohmann mendasarkan hak asasi manusia pada timbal balik. Dalam menganalisis dua pandangan tentang hak asasi manusia, penelitian ini menggunakan metode kualitatif dengan pendekatan studi literatur. Penelitian ini menemukan bahwa sifat universal hak asasi manusia selalu berakar pada penderitaan manusia, prinsip resiprositas penghormatan timbal balik, serta integrasi kewajiban moral ke dalam kerangka hukum untuk melindungi penentuan nasib sendiri dan martabat individu.

#### **Keywords:**

human rights; philosophy; justification; universality; Höffe; Lohmann

#### **Kata Kunci:**

*hak asasi manusia; filsafat; pemberan; universalitas; Höffe; Lohmann*

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## 1 Introduction

The question about the foundation of human rights is a matter of justification of the reason for recognizing the existence of and respect for human rights. While mainstream thoughts argue the need for such justification, other scholars reject this notion, arguing that the search for an ultimate foundation of human rights is both useless and dangerous. They assert that it can distract us from the real human rights problems.<sup>1</sup> Such intellectual attitude arises from a rather pragmatic view about truth and knowledge which are almost impossible to have any “ultimate justification”. It is never neutral but always circular. It means that either human truth or human knowledge are limited by what can be framed with language of a particular community. Thus, when looking for the ultimate reasoning of something, humans always put forward values that should actually be considered as conclusions of the ultimate reasoning.<sup>2</sup> This makes the process of justification circular. Given this, one must question how and to what extent such approach can be applicable in a pluralistic society?

This article seeks to address this question by referencing Otfried Höffe’s reciprocity arguments which are grounded on universal view about humanity and George Lohmann’s emphasis on mutual legal and moral characteristics of human rights. Although Höffe and Lohmann have both offered important contributions to the philosophical foundation of human rights, their approaches have rarely been brought into direct dialogue to address the challenge of pluralism in a globalized context. Most existing studies tend to examine either moral or legal justifications of human rights in isolation, without integrating the anthropological and institutional perspectives that both thinkers offer. It is precisely in the contemporary-globalized world marked by diversity and pluralism that the justification of foundation of human rights becomes increasingly critical. In the economic sphere, globalization has facilitated capitalist system which creates economic freedom and increase living standard. Nevertheless, the demand for economic deregulation, privatization of public sectors and goods, and lack of government intervention in economic activities has led to widespread global economic injustice and inequality that widens the gap between the rich and the poor.<sup>3</sup> In political sphere, globalization has strengthened democratic rights through public engagement and participation in political system around the world, however, individualistic approach to democracy has led to the tyranny of majority that violates minority groups rights.

These contradictory realities indicate that the Western world-led globalization has to large extent promoted human rights approach as a possible solution for various problems in the world.<sup>4</sup> However, as a concept historically rooted in western tradition, the questions to what extent and to which justification do human rights claim universally or globally validity need to be addressed particularly from a multicultural perspective. Therefore, this article aims to fill the gap by offering a synthesized philosophical justification of human rights that bridges moral obligation, legal institutionalization, and anthropological universality. Drawing from Höffe’s concept of reciprocity as a condition of human survival, and Lohmann’s articulation of mutual moral and legal duties, this article provides an integrative approach to ground human rights in a way that is both universal and applicable across diverse social contexts. This approach is particularly relevant in light of various empirical studies that demonstrate the disconnection between universal human rights frameworks and lived experiences of marginalized communities. For instance, Hearnden<sup>5</sup> highlights how majoritarian democracy in Sri Lanka often suppresses minority rights, revealing structural exclusion that questions the efficacy of universal norms. Similarly, Aquino<sup>6</sup> shows that rights discourse often fails to protect indigenous maritime peoples in the Philippines when not rooted in their lived realities. These cases underline the urgency of a philosophical foundation that can mediate between normative universality and sociocultural specificity.

The novelty of this study lies in its effort to simultaneously bring together philosophical anthropology, moral theory, and legal institutionalism to reconstruct a justification of human rights that responds to contemporary global challenges—such as inequality, exclusion, and erosion of solidarity—in multicultural societies. This research will

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1 Nat Rutherford and Michael Bacon, “Rorty, Richard,” in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Dordrecht: Springer Netherlands, 2023), 3135–41, [https://doi.org/10.1007/978-94-007-6519-1\\_325](https://doi.org/10.1007/978-94-007-6519-1_325).

2 Norbert Brieskorn, *Menschenrechte: Eine Historisch-Philosophische Grundlegung* (Stuttgart: Kohlhammer W, 1997), 139.

3 Anna Joceline Dizon Ituriaga, “Third-Country Hiring: The Case of Overseas Filipino Workers in Taiwan to Poland,” *Jurnal HAM* 15, no. 1 (March 27, 2024): 51–62, <https://doi.org/10.30641/ham.2024.15.51-62>.

4 Otto Gusti Ndegong Madung, Adison Adrianus Sihombing, and Zaenuddin Hudi Prasojo, “Human Rights and Views of the Catholic Church under Habermas Discourse Theory,” *Journal of Southeast Asian Human Rights* 7, no. 2 (December 13, 2023): 154–75, <https://doi.org/10.19184/jseahr.v7i2.38464>.

5 Scott Robert Hearnden, “Peace and Human Rights in Sri Lanka: The Struggle for Marginalised Communities to Advocate for Justice,” *Jurnal HAM* 15, no. 2 (2024): 95–110, <https://doi.org/10.30641/ham.2024.15.95-110>.

6 Kriselle Marie Calica Aquino, “Human Rights and the Periphery: Righting the Deprivation of the Sama Dilaut as Indigenous Maritime Peoples in the Southern Philippines,” *Jurnal HAM* 15, no. 1 (2024): 19–34, <https://doi.org/10.30641/ham.2024.15.19-34>.

answer how human rights can be justified and universally accepted according to Höffe and Lohmann. By doing so, it contributes to a more robust conceptual framework for understanding the universality of human rights beyond Western moral exceptionalism.

This article will be divided into some parts which the introduction is the first section. The article's methodology is covered in the second section. The author provides a definition and a brief history of the notion of human rights in the third section that follows. The article's findings are presented in the fourth section. The conclusion of this research will be the last part of the article.

## 2 Method

This research constitutes a philosophical inquiry aimed at providing a rational foundation for understanding the validity and universality of human rights. The method that has been used in this article is qualitative method. Literature study approach is used in this research which the works of prominent philosophers such as Höffe and Lohmann are synthesised in order to find the justification of universality of human rights. As philosophical research, this article is conceived as a critical science of reason (*Vernunftwissenschaft*) that investigates the conditions for the possibility of empirical reality as a whole. As a science of reason, philosophy does not focus on empirical experiences *per se* but rather examines the underlying conditions that make such experiences possible. Consequently, philosophy is concerned with the non-empirical preconditions of experience. This is why philosophical research typically does not involve fieldwork but rather relies on literature-based analysis.

## 3 Findings and Discussion

### 3.1 The Definition and Brief History of Human Rights

Human rights are fundamental entitlements that individual possess regardless of contingent circumstances such as descent, race, religion, nation and gender. These essential rights include, for instance, the right to life and physical integrity, the right to equal protection under the law and the right to freedom of thought and expression. These rights are inherent by nature, not because of individual's membership in any society or state. In this sense human rights are primarily moral rights. It means that their validity does not depend on whether they are secured by positive law or not, rather, they are rooted in moral convictions. However, it does not mean that the term "human rights" has to exclude positive law. When human rights are guaranteed by positive law, they have the status of legal rights.

The essence of both legal and moral rights is the principle of equal freedom for all individuals. One of the significant historical events that linked the concept of freedom with the notion of human rights was the sign of Magna Carta in England in 1215. This document aimed to limit the arbitrary and absolute power of King John of England. Church leaders and barons who felt that their freedom over their own lives and properties were threatened by sovereign arbitrariness reclaimed such freedom by imposing the restrictions on the King's power.

Although Magna Carta initially only granted freedom to those who had social status, such as the Church leaders and the baroness, it lied the ground future movement for freedom and rights, particularly in the process of the codification of Habeas Corpus in 1679 and the English Bill of Rights in 1689. Habeas Corpus strengthened powerful writ to protect individual liberty and prevented arbitrary arrest and imprisonment. It granted both the courts and judges the authority to make legitimate decisions regarding imprisonment. The English Bill of Rights was a product of Glorious Revolution against arbitrary power of King James II. Following the overthrow of King James, his daughter, Mary, and her husband, Williams of Orange agreed to adopt English Bills of Rights that transformed the power of England monarchy from absolute monarchy to constitutional monarchy. It limited the power of monarchy in order to safeguard the freedom and rights of all citizens, not only for those who had status, from arbitrary power of the monarchy.

This historical trajectory paved the way for the development of democratic governance, where sovereign power resides with the people. Through political participation in a democracy, this sovereign power is transferred to those in the leadership position (public authority), and with such power public authorities have the responsibility to protect the freedom and rights of all. The democracy principle underlines that legitimate power rests on the will of the individuals. The citizens are no longer subservient, but rather take part in power by having the right to vote and right to engage in the government which determines the course of politics.

In the 20th century, as those entrusted sovereign power of the people turned into arbitrary authorities that oppressed their own citizens, the idea of human rights was increasingly utilized to protect individuals from fascist governments. Similarly, the colonization of certain groups of people in many parts of the world by foreign power led the colonized countries used human rights, especially the right to self-determination, as a justification for their

struggle for independence. These developments played a central role in drafting the Universal Declaration of Human Rights (UDHR) of 1948. In 1966, the United Nations adopted two important covenants, the International Covenant on Political and Civil Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These documents continue to make significant contributions to the promotion and protection of human rights.

The UDHR represents a recognition of universal nature of our shared humanity, such as freedom, autonomy and equality of all human being as a moral foundation for what individuals are entitled to as their rights (moral rights). However, a moral foundation for moral rights alone is insufficient to ensure an equal and universal guarantee of human rights in a complex political, social, economic and cultural settings of the globalized world. This condition underscores the necessity of establishing of a legal foundation to protect human rights as legal rights as represented in the legal frameworks of rights in the ICCPR and ICESCR. This historical background of the development of human rights leads to the process of how human rights will be justified.

### 3.2 Philosophical Justification of Human Rights

#### 3.2.1 Opposite Positions

Although human rights are internationally recognized as both moral and legal rights, their justification as universally valid remains a topic of significant controversy. Within philosophical discourse, while some have argued that human rights should apply at any time and in any culture,<sup>7</sup> others still contest this claim. This opposing group includes those who dispute the universality of moral values, such as the proponents of ethical nihilism and ethical relativism. Proponents of ethical nihilism argue that if human rights are moral values, it is reasonable to raise question about the universal validity of human rights because there is no moral value with universal validity as such. They reject the independent existence of norms and values, while arguing that human behavior is completely determined by rewards and punishments.<sup>8</sup> People act not because they know what is right, but because they are conditioned to do so. On the other hand, the proponents of moral relativism recognize the variety of values and norms which is prone to conflict to one another. If there are conflicts of values, it is impossible to find rational solutions to solve these conflicts. What is required in such condition is a compromise.

Nonetheless, both views are problematic. Ethical nihilism contradicts the observable fact that individuals generally react with anger or rage when they experience injustice and with guilt and regret when they commit injustice to others.<sup>9</sup> However, from a third-person perspective, one might deny the existence of ethical norms. However, in doing so, that person is committing what Habermas called “performative contradiction.”<sup>10</sup> It means that in our philosophical arguments once individuals reject the existence and validity of moral rules, they inadvertently contradict the very norms that underpin their own philosophical arguments, which are rooted in everyday life and interactions.

Ethical relativism, in turn, overlooks the fact that there exists a core set of ethical rules that are applicable across all cultures and at all times.<sup>11</sup> These universal principles are grounded in fundamental aspects of human existence.<sup>12</sup> One of the important human characteristics is the fact that all people are vulnerable.<sup>13</sup> The individual’s vulnerability reveals human frailty and helplessness, and it represents the need for ethical principle for guiding action. In practice, there are situations where individuals harm others for personal gain, yet at other times, they must refrain from doing so in the interest of others. There is a core ethical attitude where everyone has an interest in protecting themselves and others around them from harm. This basic ethical attitude is rooted in self-

7 Rainer Forst, “The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach,” *Ethics* 120, no. 4 (July 2010): 711–40, <https://doi.org/10.1086/653434>.

8 Gertrud Nunner-Winkler, “Moralischer Universalismus – kultureller Relativismus. Zum Problem der Menschenrechte,” in *Universale Menschenrechte im Widerspruch der Kulturen, Band II der Symposium Das eine Menschenrecht für alle und die vielen Lebensformen*, ed. Johannes Hoffmann (Frankfurt am Main: Verlag für Interkulturelle Kommunikation, 1991), 79.

9 Gertrud Nunner-Winkler, “Two Moralities? A Critical Discussion of an Ethic of Care and Responsibility versus an Ethic of Rights and Justice,” in *An Ethic of Care*, ed. Mary Jeanne Larrabee (New York: Routledge, 2016), 143–56, <https://doi.org/10.4324/9780203760192>.

10 Petra Hedberg, “On the Performative and the Pragmatic. Performative vs. Pragmatic Self-Contradictions,” *SATS* 9, no. 2 (January 2008): 91–115, <https://doi.org/10.1515/SATS.2008.91>.

11 Nunner-Winkler, “Moralischer Universalismus – kultureller Relativismus. Zum Problem der Menschenrechte,” 82.

12 Gertrud Nunner-Winkler, “Moral Progress: Improvement of Moral Concepts, Refinements of Moral Motivation,” *Analyse & Kritik* 42, no. 1 (May 1, 2020): 171–90, <https://doi.org/10.1515/auk-2020-0007>.

13 Peter G. Kirchschlaeger, “Human Dignity and Human Rights: Fostering and Protecting Pluralism and Particularity,” *Interdisciplinary Journal for Religion and Transformation in Contemporary Society* 6, no. 1 (July 2, 2020): 91–92, <https://doi.org/10.30965/23642807-00601006>.

preservation, which demands that individuals pay attention to the welfare of others. The negative duties—which require individuals not to cause harm—are crucial for safeguarding both individual and collective interests and securing the integrity of all.<sup>14</sup>

This understanding of core ethical principles is equally relevant to both the ethical and legal dimensions of human rights. A claim to one's own rights inherently implies an obligation to respect and protect the rights of others. In this regard, the arguments made by Höffe and Lohmann on the concept of reciprocity are particularly pertinent. Both philosophers emphasize the importance of mutual recognition and the reciprocal responsibility that is fundamental to the justification and protection of human rights as both moral and legal rights.

### 3.2.2 Otfried Höffe's Anthropological Approach

To justify both the existence of and respect for human rights, Otfried Höffe invokes the principle of reciprocity. According to Höffe, individuals do not wish to inflict injustice to others, because they expect to be treated similarly in return, driven by their own instinct for survival.<sup>15</sup> Höffe is not merely content with procedural aspects of human rights, but he moves beyond to examine the anthropological aspects. He argues that there are fundamental anthropological interests that are essential for anyone to remain human, and this leads to the question: what are these interests?

In response to this question, Höffe examines two different anthropological approaches, both aiming at developing a strictly universal view of humanity. First approach is normative anthropology<sup>16</sup> which describes human beings in terms of how they conceive of their tasks and opportunities in order to achieve their goals. The goals of human existence according to this approach are to experience happiness, self-realization and a meaningful existence. These goals are simultaneously serving the perfection of humanity. Given that humanity is defined by these goals, normative anthropology is related to teleological anthropology, a process in human nature that is driven by ends, goals and purposes.

By applying normative anthropology in the context of human rights discourse, the question arises as to what extent this approach is suitable to justify both the existence and respect for human rights. Höffe argues that the normative approach alone is insufficient for justifying human rights. It is problematic to understand human rights in terms of a normative anthropology because it may lead to inequalities. The danger lies in focusing solely on the 'humane' individual who pursues personal goals while disregarding the basic rights of those who do not conform to such expectations.<sup>17</sup> This creates a divide where inequalities are viewed as legitimate rights. The postmodern emphasis on rights to individuality, difference, and eccentricity—essentially advocating for radical pluralization—further complicates this issue. However, Höffe argues that the core idea of human rights opposes such radical pluralization. While diversity and non-conformity are valuable, the concept of human rights is grounded in a valid condition of equality inherent to all human beings. These anthropological conditions of equality are universal, even within societies characterized by diversity and non-conformity.

Höffe's second approach is transcendental anthropology which focuses on the question about the necessary condition for humans to exist as human. It asks what makes humans possible as human beings.<sup>18</sup> It refers to the initial conditions, the indispensable elements of being human. Taking the term "transcendental" from Kant, Höffe defines the conditions for the possibility of being human. These conditions concern humans as physical and living beings, as linguistic and rational beings, and as social and cooperative beings who have transcendent interests in their lives.<sup>19</sup>

Having transcendental interest in life means recognizing life itself holds special status and meaning. Life is the foundation of all human interests which is a necessary condition for freedom of choice and all kinds of freedoms that come with being human. Whatever a person specifically either desires or aims to achieve, it is only through possessing life and a body that they can act to realize these desires. A person, endowed with life and a body, is capable of making rational and moral choices and taking the necessary actions to fulfil their

14 Rainer Döbert and Gertrud Nunner-Winkler, "Value Change and Morality," in *Moral Development and the Social Environment*, ed. Georg Lind, 1st ed. (New York: Routledge, 2023), 125–53, <https://doi.org/10.4324/9781003419273>.

15 Otfried Höffe, "Reflective Equilibrium in Times of Globalization? An Alternative to Rawls," in *John Rawls: A Theory of Justice*, ed. Otfried Höffe (Leiden ; Boston: Brill, 2013), 193–211.

16 Otfried Höffe, "Transzendentaler Tausch: Eine Legitimationsfigur Für Menschenrechte?," in *Philosophie Der Menschenrechte*, ed. Stefan Gosepath and Georg Lohmann (Frankfurt am Main: Suhrkamp, 1998), 32.

17 Suárez Müller, Fernando. "The hierarchy of human rights and the transcendental system of right." *Human Rights Review* 20.1 (2019): 47–66.

18 Otfried Höffe, „Transzendentaler Tausch. Eine Legitimationsfigur für Menschenrechte?“, in: Gosepath, Stefan und Lohmann, Georg (Hrsg.), op.cit, 34.

19 *Ibid.*, 39

transcendental interests. Recognition and respect for human rights are essential to providing the conditions for individuals to achieve these desires and exercise their freedom.

However, regardless of cultures and philosophical views of humanity, in real life people are constantly at risk of becoming victims and perpetrators of others, either through actions or through omissions. Human lives are constantly at risk. According to Höffe, since humans have a strong will to survive, the urge to preserve life leads them to avoid becoming victims of others. They can only succeed in this struggle if they enter into a secure relationship that is intertwined by all people. In this interaction, individuals must exchange their renunciation of violence with the renunciation of all others. If during this interaction, they have interest in the integrity of life and body, it would mean that they as human beings do not exercise arbitrary violence against their own kind. Since the exchange is the focus, Höffe calls this approach as “an exchange” or “negative exchange” to emphasize the character of renunciation.<sup>20</sup>

Höffe rejects the notion that violence is inherent to of human nature. As he writes: “violence against one’s own kind is not viewed as a basic human characteristic, but rather as a danger that cannot be ruled out.”<sup>21</sup> Höffe therefore admits that the risk of conflict is part of the “*conditio humana*”. In this respect, social institutions can no longer be adequately understood from the natural development of given social impulses alone. Personal contributions are required. Höffe agrees with the view that humans are “by nature” social creatures. However, they must create themselves as current social beings in a real relationship with others: “Society only arises through mutual recognition. Human rights play a small, clearly defined role in this task, the elementary layer of innate interests.”<sup>22</sup> Human rights, in this context, play a fundamental role in ensuring the basic conditions necessary for the existence of a just society—one that is defined by mutual recognition and respect.

As a social being, humans naturally belong to a society in which recognition for the existence of and respect for human rights as a basic condition for human freedom, particularly freedom from fear and harm. These innate interests can only be fulfilled through mutual recognition and respect, which are central to Höffe’s conception of reciprocity. This process of reciprocity, arising from human nature, provides a universal foundation for the existence and respect of fundamental human rights, entitled to every person.

The finding from Höffe’s approach to justify human rights can be seen in some conditions such as life itself, rationality and social interaction. He highlights that the conditions for human existence (life, rationality, and social interaction) are universal, making human rights essential to preserving these basic conditions. It means that human rights arise from the need to protect life and ensure self-preservation through mutual recognition and reciprocity.

### 3.3 Human Rights as Morality and Law

The reciprocity argument outlined above presupposes moral and legal foundation based on which claim of having entitlement to human rights that requires recognition and respect can be made. This position is represented by Georg Lohmann, who views human rights as both morality and law.<sup>23</sup> He presented this argument in response to the dichotomy made by Ernst Tugendhat, who understands human rights solely as morality, and Jürgen Habermas, who sees human rights strictly as legal rights.

Tugendhat conceptualizes human rights grounded in morality.<sup>24</sup> He defines morality as universal and equal respect for everyone. His understanding of morality includes the obligation to recognize and concern with the interests of all human beings equally.<sup>25</sup> It is in connection with this duty that Tugendhat understands the claim to human rights. Tugendhat rejects the classic liberal view that human rights should be regarded exclusively as rights to individual freedom. According to Tugendhat, this view is insufficient because only right to life and personal integrity in terms of negative rights alone does not constitute right to freedom. Therefore, Tugendhat proposed a new view that can be called liberal social position by supplementing the negative concept of freedom with a positive one. For Tugendhat, the negative duties that arise from respecting the person are almost equated with the positive duties of support and help in times of need and difficulties.<sup>26</sup>

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20 Fernando Suárez Müller, “The Hierarchy of Human Rights and the Transcendental System of Right,” *Human Rights Review* 20, no. 1 (March 2019): 48, <https://doi.org/10.1007/s12142-018-0537-z>.

21 Höffe, “Transzendentaler Tausch: Eine Legitimationsfigur Für Menschenrechte?,” 36.

22 Höffe, 36.

23 Georg Lohmann, “Menschenrechte zwischen Moral und Recht,” in *Philosophie der Menschenrechte*, ed. Herausgegeben von Stefan Gosepath and Georg Lohmann (Frankfurt am Main: Suhrkamp, 1998), 81, <https://doi.org/10.1515/auk-1993-0201>.and b

24 Lohmann, 68.and b

25 Lohmann, 68.and b

26 Lohmann, 69.and b

On the other hand, Habermas represents a republican-liberal thesis on human rights which emphasizes the equal origin of liberal civil liberties and democratic participation rights. According to his view, social participation rights only have a lower status. Habermas formulates such relationship between morality and law in his critique to the notion of natural law and Kant's ethics, emphasizing that legal rights are subordinate to morality. He disagreed with this thesis and instead argued for a strict separation between law and morality, which is later transposed into his conception of human rights. Habermas asserts that "human rights which are embedded in the democratic practice of self-determination of citizens must then, regardless of their moral content, be described from the outset as rights in the legal sense."<sup>27</sup>

In contrast to Tugendhat, Habermas takes a legal view of human rights.<sup>28</sup> Human rights are no different from basic legal rights. Their legitimacy arises from the legitimacy of the legislative process of a concrete democratic legal community. This leads to the question of the relationship between human rights and popular sovereignty. This connection determines the principle of democracy, which results from the mutual relationship between discourse principle and the legal form.<sup>29</sup> The discourse principle means that norms of action can only be valid if all those potentially affected could agree as participants in rational discourse. The discourse principle must first be legally institutionalized. It can bring about the principle of democracy, from which the law derives its legitimacy.<sup>30</sup>

Despite the contributions of both Tugendhat and Habermas, which clarify that belonging to a state community (Habermas) or to the community of those who 'seek to be moral' (Tugendhat) provides criteria for justifying human rights claims, these criteria are insufficient for adequately conceptualizing the normative character of human rights.<sup>31</sup> Lohmann critiques both approaches as inadequate and one-sidedness, attempting a more comprehensive understanding of human rights. He believes that neither belonging to a state community (Habermas) nor belonging to the community of morally willing people (Tugendhat) can justify why a person can claim human rights.<sup>32</sup> Lohmann develops a comprehensive concept of human rights that relates to the levels of morality, law and politics.

Firstly, Lohmann examines the question of how it can be morally justified that people can claim human rights. In his view, the claim to moral rights is grounded in the moral obligation to recognize all others as equal subjects. Recognizing others as equal subjects means showing respect for their individual self-determination.

In his justification of human rights, Lohmann assumes moral obligations. Human rights as moral rights arise from mutual moral obligations. Morality can initially be described as a system of duties without immediate reference rights.<sup>33</sup> People feel obligated neither to cause physical harm nor deceive those around them. This engagement arises from people's ability to determine what is good or bad for them and from the ability to develop the concepts of what is morally good. Thus, moral duties are inherently tied to self-determination

Mutual moral obligations exist when both the subject and the object of moral consideration are determined by the capacity for self-determination.<sup>34</sup> When this reciprocity exists, the concept of "right" can be introduced. This requires, first of all, a conscious decision to recognize the object of moral obligations as a legal entity. The reason for the recognition lies in the mutual obligations. Lohmann notes: "It is in the rational self-interest of A and B to recognize each other as legal subjects if the corresponding obligations are reciprocal."<sup>35</sup>

The transformation of mutual moral obligations into mutually recognized moral rights provides a source of self-respect and self-esteem, conferring special importance on individual self-determination. Self-respect and self-esteem give individual self-determination a special importance. The morality of respect is primarily about the ability for self-determination, which must be respected (positive duties) and encouraged in emergencies (negative duties). Both the negative and positive duties require a mutual appreciation of the ability for self-determination.

Secondly, Lohmann explores the reasons and consequences of the positivization of human rights.<sup>36</sup> He argues that a necessary condition for a human right is that it must first be moral right. However, the term "human

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27 Jürgen Habermas, *Faktizität und Geltung* (Frankfurt am Main: Suhrkamp, 1994), 136.

28 Philippe-Antoine Hoyeck, "Religion and democracy: Jürgen Habermas and Charles Taylor on the public use of reason," *The European Legacy* 26, no. 2 (2021): 111-130.

29 Georg Lohmann, „Menschenrechte zwischen Moral und Recht“, *op.cit.*, 154.

30 Madung, Sihombing, and Prasojo, "Human Rights and Views of the Catholic Church under Habermas Discourse Theory," 165.

31 Lohmann, "Menschenrechte zwischen Moral und Recht," 83.and b

32 Lohmann, 83.and b

33 Lohmann, 84.and b

34 Lohmann, 85.and b

35 Lohmann, 86.and b

36 Lohmann, 89.and b

right" is based on the positive conceptual law. This means that the protection of human rights is defined from the perspective of positive law.

Lohmann presents several reasons for the necessity of converting moral rights into positive rights.<sup>37</sup> He first points out the improved chances of enforcement through positive law. He then argues that the positive duties associated with human rights require the formation of governmental organizations to fulfill them, since individuals would quickly be overburdened by these duties.

The positivization of morality-based human rights leads to a particularization of their scope, since positive law initially only applies to the members of a given legal community. Since human rights as moral rights have a universal content, Lohmann asserts that there is a moral obligation to compensate for this particularization through supranational and globalized institutionalization.

Thirdly, Lohmann delves into the political concretization of human rights, examining how the legal protection of individual self-determination should be specifically realized.<sup>38</sup> The political claim is reflected in how the legal protection of individual self-determination should be specifically designed. An important question in this context is which specific human rights should be included in the canon. Individual self-determination arises as the pursuit and satisfaction of the needs and interests of a particular person. Lohmann is convinced that the pursuit and satisfaction of interests that are important to us only deserve human rights protection if the interests do not cause injustice.

According to Lohmann, while introducing a critical perspective human rights cannot simply be understood through moral or legal lenses alone but they must be integrated into both to create enforceable and universally recognized rights. This process involves translating moral rights into legal ones and ensuring they are globally institutionalized.

#### 4 Conclusion

To philosophically justify human rights is to address the question of why individuals are entitled to ethical and legal rights. Both Höffe and Lohmann build their justification on the reciprocity attitude of human nature. Their arguments, however, may sound pessimistic as they are built upon an egoistic view about humanity. Such argument may give impression that people only provide a service because they want something in return. Man is homo economicus who is strongly influenced by the pursuit of profit. While to some extent this may be true, this is certainly one type of human behavior—it is not the sole representation of human nature. There is equally undeniable fact that people dedicate themselves to the lives of others with complete devotion without expecting anything in return. People often show compassion and empathy for others, even strangers, and can deeply share in the suffering of others.

The experience of being vulnerable due to suffering is a universal aspect of human conditions. It transcends every culture, religion, belief and worldviews. No society, belief system, or cultural tradition fails to offer at least some forms of explanation of the reality of suffering and evil. Furthermore, this universal experience of suffering is not passively accepted; people actively resist it, striving to free themselves from pain and injustice. The history of resistance movements among the poor and oppressed across various cultures stands as a testament to this enduring struggle.

Sensitivity to the suffering of others can lead individuals to act in solidarity with those who are suffering. Recognition of human rights is a strong sign of solidarity that arises from the experience of suffering. When examining the origins of human rights or its justification, it becomes evident that they are less a compilation of theoretical demands or philosophical doctrines and more of a collective human response to history marked by countless victims and untold suffering. From this shared experience and collective memory, the collective will be emerged, that is, a will to end past injustices and to demand the recognition and respect of human rights for every individual. Both Höffe and Lohman picture clearly that human conditions are the common ground of justification of human rights.

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37 Lohmann, 91.and b

38 Lohmann, 92.and b

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