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PATOČKA'S ASUBJECTIVE PHENOMENOLOGY

Toward a New Concept of Human Rights

James R. Mensch, *Patočka's Asubjective Phenomenology: Toward a New Concept of Human Rights* (Würzburg: Verlag Köningshausen & Neumann, 2016), 165 p. ISBN 9783826057748.

Although Jan Patočka's philosophy centres mostly on the topics of phenomenology and the philosophy of history, much of his work throughout the 1970s comprises a clearly defined political philosophy. Patočka approaches this discipline from an unorthodox perspective, eschewing the examination of political establishments and spending little time extolling the virtues of democracy over totalitarianism.

Patočka offers his account on the issue of human rights in two essays.¹ However, in these essays he does not explicitly show how his idea of asubjective phenomenology corresponds with the issue of human rights. Rather, Patočka focuses on formulating the importance of human rights and Charter 77 in the time of communist Czechoslovakia.

The significance of Mensch's book resides in his eloquent reconstruction of the relationship between asubjective phenomenology and human rights. He successfully bridges two seemingly unrelated sides of Patočka's philosophy – asubjective phenomenology and political philosophy – and creates room for a new conception of human rights. Mensch, following Patočka, highlights the primacy of absolute morality as a measure of one's actions and undermines the conventional subject-object dichotomy as a source of meaning. In his examination of Patočka's thought, Mensch implicitly casts light on less obvious issues of human rights that confront us in today's liberal democracy – the problem of the misconception and misuse of human rights.

¹ See: Jan Patočka, "The Obligation to Resist Injustice," in Erazim Kohák, *Jan Patočka: Philosophy and Selected Writings* (Chicago and London: The University of Chicago Press, 1989), pp. 340–342; Jan Patočka, "What We Can and Cannot Expect from Charta 77," in Kohák, *Jan Patočka*, pp. 343–345.

In his book *Patočka's Asubjective Phenomenology: Toward a New Concept of Human Rights*, Mensch explores two realms. Firstly, he offers a very detailed reconstruction of Patočka's novel concept of *asubjective phenomenology*. Secondly, he demonstrates how it is possible to anchor the idea of human rights in this particular model of phenomenology.

Mensch thoroughly and attentively guides his readers through the various stages by which the idea of asubjective phenomenology took its form. He focuses on Patočka's critique of Husserl's *transcendental phenomenology*. Patočka moves beyond "Husserl's persistent quest for a ground of certainty in subjectivity,"² the result of which is, as Mensch argues, the effort to "replace transcendental subjectivity with the lawfulness of appearing as such" (p. 57). Further, Mensch explores the impact of Heidegger's thought on the formation of Patočka's own model of phenomenology. Through the analytical lens of *Dasein*, he compares both Patočka's and Heidegger's understandings of *care* (p. 39) and their accounts of *nothingness* (p. 74–75).

Mensch observes that Patočka's philosophy introduces the "unconditional character of morality" (p. 11). As Patočka formulates it in his essay: "If human development [...] is to be possible, humankind needs to be convinced of the unconditional validity of principles which are, in that sense, 'sacred,' valid for all humans and at all times, and capable of setting out humanity's goals. We need [...] a morality that is [...] absolute."³ In his essays from the 1970s, absolute morality represents a horizon for human rights, the grounds upon which human rights originate.⁴ Unconditional morality stands for a certain essential measure (an ideal) that acts as a guideline for human actions and without which any moral action or development towards human perfection would be merely relative, if not entirely impossible. Patočka also points to the obligation of human beings to link their actions to the realm of absolute morality when "setting humanity's goal."⁵ He proposes that, despite the historicity of human beings (despite their being finite), they have an unconditional moral obligation.

Mensch, in this context, introduces the key concepts of Patočka's asubjective phenomenology that preserve and support the idea of the unconditional character of morality: "the soul, its care, and [...] *living in truth*" (p. 11). Mensch argues that human rights are supposed to defend the unconditional character of morality (*ibid.*). However, if human rights need to be anchored in the idea of asubjective phenomenology, this will be possible only through the soul, its care and the agency of the soul to live in truth. Mensch thus points to a stark contradiction in Patočka's endeavour to ground human rights in his model of asubjective phenomenology. It appears that Patočka, by introducing the

² Kohák, *Jan Patočka*, p. 6.

³ Patočka, "The Obligation to Resist Injustice," p. 340.

⁴ *Ibid.*

⁵ *Ibid.*

soul into the discourse of human rights,⁶ aims to propose a new subject that through care – the agency of the soul – preserves and exercises human rights. The ambiguity of this position opens up a series of questions: “How is he [Patočka] able to speak of human rights and deny the subject of such rights?” (*ibid.*) How is it even possible that human rights can be anchored in Patočka's idea of asubjective phenomenology?

As Mensch emphasises in his work, for Patočka unconditional morality is not a realm created by human beings. Absolute morality is not the result of human activity and efforts, not something that a human being modifies and amends. Absolute morality, so conceived, exists independently of the interference of human beings and represents a horizon that guides human actions and defines humans' beings.

Mensch presents an analogy with regard to this idea and argues that, if unconditional morality represents the grounds upon which human rights originate, “human rights are not a result of our humanity – that is, something we postulate” (p. 153). Human rights are not a set of rules that arbitrarily suit human needs, wishes, and aspirations (p. 12), nor do they give testimony to humankind having reached a certain level of maturity. Human rights represent a sacred set of rules (“far more significant than the usual treaties among nations which deal only with the interests of countries and powers, since it extends to the moral, spiritual realm”)⁷ that originates in unconditional morality, reaching far beyond the subject's immediate and temporary needs.

However, although Patočka denies the idea that human rights are a result of direct human intervention and elevates human rights to the realm of absolute morality, both Patočka (in his essays from the 1970s) and Mensch (in his book) point to human beings' responsibility with regard to human rights, which resides in the effort to safeguard such rights (p. 153), because only by safeguarding these rights do we acknowledge and protect the realm of unconditional morality and, as a result, “preserve our humanity” (*ibid.*). Mensch thus argues that human beings have an unconditional moral obligation with regard to human rights. Human beings become the guardians of these rights, safeguarding them and guaranteeing that they align with unconditional morality.

As Mensch points out, Patočka, in his reconstruction of the model of asubjective phenomenology, introduces the concept of the soul as a non-metaphysical concept: a soul that avoids regarding itself as a *substance* (p. 146). In Chapter IV, Mensch provides a very detailed analysis of the soul and its *ontological motion* – a concept that originates in the thought of Aristotle. By ontological motion Aristotle does not mean the spatial movement of subjects and objects, but rather motion as actualisation (*entelechia*) (p. 89).

The weight is not put on the soul itself (on the soul as a substance, the soul as the subject), but on the agency of the soul, on its motion as actualisation (*entelechia*): the

⁶ Being the translation of unconditional morality into the realm of everyday life.

⁷ Patočka, “The Obligation to Resist Injustice,” p. 341.

movement of human existence, which in this context is decisive. This motion is intrinsic to the soul, as it represents a fundamental “principle (*arche*) of living beings” (p. 148) and is vital for the living body to be alive (*ibid.*). By this set of arguments, Patočka suggests that the soul, in order to be alive, is called upon to undertake the constant movement of actualisation (*entelechia*). By implication, a soul that does not continually actualise itself (that does not care for itself) cannot be seen as a living soul. “Understood in these terms, ‘motion,’” as Patočka writes, “is what makes the existent what it is. It realizes the existent” (p. 95). “Such actualisation makes something stand out and, hence, appear” (p. 157).

In the final chapter, Mensch explains how it is possible that the new concept of human rights is grounded in the model of asubjective phenomenology. He explains how the soul, through its agency of care (restless motion as *entelechia*), safeguards human rights. Mensch demonstrates this by approaching human rights from the perspective of Patočka’s idea of the three movements of human existence.⁸ He proposes that safeguarding human rights is possible only through these three movements. Mensch depicts how care for the existential movement of the soul leads to its actualisation, and how this movement corresponds with the idea of human rights. He argues that personal human rights (the rights to life, privacy, and property) result from the first movement of human existence – the “sheltering environment” of home and family (p. 154). Economic rights (which define our relations to others) (*ibid.*), according to Mensch, result from the second movement of human existence, which is associated with work (*ibid.*). Finally, political and social rights relate to the third movement of human existence – the motion of *problematization* (movement towards the truth as freedom, which Patočka refers to as *living in truth*) (*ibid.*).

In more concrete terms, when Patočka speaks about safeguarding human rights, he speaks about the movement of human existence within the horizon of absolute morality, which in the political realm is translated as the agency of citizens to resist any form of violation of human rights: “the obligation to resist any injustice done him.”⁹ Mensch agrees with this thesis of Patočka’s and further develops the argument: “The imperative to resist them [violations of human rights] comes, then, from this humanity. The truths that define our humanity [...] are unchanging. As unaffected by the fashions of the times, they stand as a clear guide for our moral obligations. Our relation to them is part of our ‘living in the truth,’ that is, our maintaining the relation to the unchanging that preserves us” (p. 14).

Mensch believes that citizens resist injustice only if they align their actions with the truths that define humanity – with unconditional morality. The realm of unconditional

⁸ Jan Patočka, *Body, Community, Language, World*, trans. Erazim Kohák (Chicago and La Salle, Illinois: Open Court Publishing, 1998), p. 148.

⁹ Patočka, “The Obligation to Resist Injustice,” p. 342.

morality represents a universal horizon that does not change with time and that prescribes guidelines for moral action.

Still, Mensch points to a peculiarity in Patočka's call for the movement of the soul: "Human rights [...] are essential for the self-directed motion that expresses our *entelechia* as historical and as fully human. As determining the 'style' of this motion, they are, Patočka thought, worth dying for. When we sacrifice ourselves for them, we express our obligation to the ground of the possibilities of our humanity" (p. 157). And this kind of sacrifice, Mensch emphasises, does not represent an act of heroism or an act that would reciprocally bring a certain (material) gain for an individual or society. Rather, it stands for the highest expression of one's being human. Quoting Patočka, he calls it a sacrifice that "is significant solely in itself."¹⁰ Through this call for sacrifice, Patočka implies the absolute dedication of a human being to absolute universal morality which, at first, appears to be a human being's weakness but is in reality an expression of absolute freedom, limited by nothing but the horizon of one's own death. By the emphasis on the concept of sacrifice, Mensch implicitly reacts to the most common misconceptions of human rights – their replacement with "the right to dedicate one's life to the pursuit of pleasure"¹¹ – which substitutes the genuine call for freedom and leaves behind the call for sacrifice for a cause in line with the primacy of absolute morality.

Patočka, as Mensch highlights in the opening chapter of his work (p. 11), developed his ideas regarding human rights while living in communist Czechoslovakia during its era of post-1968 "normalisation." His appeal for human rights was the testimony of someone living under an oppressive regime where freedom was restricted and there was no room for human rights, since human rights (for example, freedom of thought, religion and belief, free speech and peaceful protest, and the right to free elections) could have potentially jeopardised the fragile regime. Mensch is aware that neither Patočka's emphasis on movement as the actualisation (*entelechia*) of the human soul, nor his call to resist any injustice regarding the violation of these rights, is accidental in this context. Patočka introduces the idea of asubjective phenomenology so as to point to a hidden power among seemingly powerless citizens, which stems from their agency to care for the soul and their ability to live in truth.

Reading Mensch's analysis, it remains an open question what "afterlife" can actually be attributed to Patočka's ideas on human rights (in terms of their being grounded in asubjective phenomenology) in the liberal-capitalist society of today, where human rights are incorporated into the constitutions of democratic states. Mensch's analysis does not examine whether Patočka's concept of human rights can offer an alternative answer to the misuse of human rights by authorities, where human rights serve as

¹⁰ Jan Patočka, *Heretical Essays in the Philosophy of History*, trans. Erazim Kohák (Chicago and La Salle, Illinois: Open Court Publishing, 1996), p. 130.

¹¹ Slavoj Žižek, "Against Human Rights," *New Left Review* no. 34 (2005), pp. 115–131, here 115.

a tool of political power to achieve particular political ends (for example, to justify war in the name of democracy, to cover up for de-politicisation, or to conceal the root of a political problem).

However, precisely by not explicitly delineating the difference between Patočka's time and ours, Mensch suggests that the problem of the misconception and misuse of human rights is not only an issue related to the lack of recognition of human rights by political authorities. Totalitarian regimes were unwilling to uphold human rights, as doing so may have posed a danger to the political system. Democratic establishments do uphold certain human rights and yet in some cases refuse to acknowledge the overarching horizon of absolute morality – the essential core of these rights. Human rights, so conceived, even in the democratic regimes in which they are acknowledged, turn into a formal treaty deprived of their spiritual and sacred content. Suddenly, there is no measure for one's moral actions, and human rights start to reveal a grey area that makes them vulnerable to relativism.

Through his emphasis on Patočka's *asubjective* phenomenology, and on the concept of sacrifice in particular, Mensch suggests an alternative solution to the problem of the misconception and misuse of human rights today. By anchoring the idea of human rights in asubjective phenomenology, Mensch casts light on Patočka's central idea of the movement of the soul (*entelechia*), which takes on the form of the responsibility and obligation to resist injustice when human rights are violated and abused.