LWATI: A Journal of Contemporary Research, 10(3), 124-133, 2013
ISSN: 1813-2227

The Concept of Natural Rights: A Philosophical Reflection

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ABSTRACT

The concept of natural rights presupposes the notions of nature and right. In addition, it implies the terms "duties", "obligations", and "inalienable rights" or "absolute rights", "natural law", "human rights", and "legal rights". An understanding of the ideas of right and nature will promote a better understanding of the notion of natural rights. The concept of natural rights is controversial. The debate essentially concerns whether natural rights exist and are inalienable or absolute, whether if they exist, they can not be violated or withdrawn. This paper is intended to contribute to this debate. In doing so, we will discuss the definitions and, or, conceptions of nature, right, and natural rights as well as egalitarian and non-egalitarian conceptions of natural rights. The questions which the papers will treat include the following: Are natural rights alienable or inalienable? Are they egalitarian or non-egalitarian? Is the conventionalist position that each society determines the just things tenable? Whether acceptable or not, what are the implications of the position for the claim that certain rights are inalienable? The paper will show under which conditions natural rights may be alienable or inalienable. It recognizes the possibility of societal determination of just things. However, it argues that this possibility should not be used as a basis for rejecting natural or inalienable rights. The paper maintains that societal determination of just things is compatible with the inalienability of certain rights.

Keywords: Philosophy, Reflection, Concept, Nature, Rights, Duties.

INTRODUCTION

This paper will discuss the concepts of rights and nature with a view to evolving a general definition of natural rights. It will examine various conceptions of natural rights and attempts that have been made to justify it. It

will also analyze the idea of inalienable and absolute rights. The paper is divided into six sections. Following the introductory section is the one devoted to the conceptual clarification of right, nature, and natural rights. The third section discusses the conceptions of natural rights. The fourth section focuses on the ideas of inalienable and absolute rights. The fifth section deals with criticisms and counter-criticisms of the idea of natural rights. The subject matter of the sixth section is conclusion. Having considered criticisms and counter-criticisms of the idea of natural rights, we shall submit that societal determination of just things is compatible with inalienability of certain rights.

Conceptual Clarification of Right, Nature, and Natural Rights

"A right is a claim for the enforcement, redress, or protection of which the jurisdiction of a court may be properly invoked (Davitt, 1959:33). Jellinek also defines right as the "will power of man applied to a utility or interest recognized and protected by a legal system" (Paton, 1951: 223). Three elements that feature in this definition are (1) will power, (2) interest, (3) recognition and protection. The presence of these elements in the definition of a right qualifies the right as a legal one. Paton claims that "a right is legal because it is protected (or at least recognized) by a legal system. The holder of a right exercises his will in a certain way, and that will is...directed to the satisfaction of a certain interest".

Rights can also be said to be synonymous with claim, among other things. The assertion "I have a right to freedom" means almost the same thing as "I have a justifiable claim to freedom". It can also mean that my freedom cannot be denied without adequate justification. Davitt's contribution to this issue is as follows:

> The full implication of the phrase "to have a right is better conveyed by claim. It more obviously connotes a correlation with others' duty to be just. Privilege and immunity are better expressed in terms of special claims and exemption from duty respectively (Davitt, 1959:41).

Davitt's positions on the ideas of right, claim, duty, privilege, and immunity have to contend with the notion of legitimacy. If anybody "has" a right to something, we need to ask whether the right is a legitimate one or not. It is a legitimate right that should be taken to imply a legitimate claim. For instance, suppose a presidential election is held whereby a candidate is wrongly declared as the winner and sworn-in as the president. If such president says he has a right, the right is illegitimate. The right implies an illegitimate claim. "To have an illegitimate right" does not connote a correlation with other's duty to be just. Rather others do not have a duty to be just to the holder of the

illegitimate right. To start with, the right was unjustly acquired. It is injustice to create a duty from an unjust situation. Privileges and immunity derived from the acquisition of such an illegitimate right will also be illegitimate. Whatever special claims and exemption from duty made will be illegal and unjust. Wortley (1967: 297) clarifies the ideas of immunity and privilege thus:

> He who is immune contradicts the normal liability he would otherwise have for his acts in a legal order. He who exercises a privilege, e.g. to chastise, contradicts, the normal duty he would otherwise have in a legal order, e.g. to make reparation for assault. Privilege and immunity seem to relate in the first' instance to rights 'in rem' of others, because when actions are brought to protect those rights 'in rem ' against privileged or immune persons the actions will fail.

The above stated analysis of Davitt's contribution has implication for the submission of Wortley. If it is granted that a president, as portrayed above, does not have tenable immunity and privileges, it will be questionable to suppose that actions brought against him or her on those two platforms will fail. The problem of legitimacy has to be effectively resolved, legally or otherwise, in order to promote the contradiction of the normal liability the president would otherwise have for his or her acts in a legal order. This same condition must be satisfied in order for the president to contradict the normal duty he or she otherwise have in a legal order. It should be noted that a society or country is not under obligation to satisfy the illegitimate rights, and, or claims of any of its citizens (Iroaganachi, 2004:188). Any society which acts otherwise is trying to lay the foundation of avoidable conflict(s). Such a move may "serve as a source of discontent which (may lead) to social disruption" (Odunuga,2007:115). In other words, the society is inadvertently sowing the seed of instability.

Having defined "right", it is necessary to know what "nature" means. Leo Strauss (1953:83) recognizes two most important meanings of "nature". These are 'nature' as 'essential character of a thing or a group of things', and ' nature' as the ' first things'. His discussion of natural right, as well as our analysis of the same issue, assume the second sense of "nature"; that is, 'nature' as 'first things'. In the strict sense, natural right can be defined as "a right independent of, or prior to all covenants or compacts" (Strauss, 1953:111). Paton holds that the idea that rights are inherent attributes of the human will finds expression and extension in the assertion of the doctrine of natural right. According to this doctrine, it is legally beyond the powers of the state to interfere with some aspects of personal life (Paton,1951:221). Paton also believes that a theory of natural law may be made the basis for the deduction of natural rights. Moreover, As quoted in Dworkin (1977:57), Raphael affirms that "a system of natural law, a system of duties which all men have to others, is at. the same time a system of rights which all men have against others". Strauss claims that the emergence of the idea of natural

right presupposes the doubt of authority. It is the doubt of authority that facilitates, among other things, the quest for the first things and the right way or the discovery of nature (Strauss, 1953:84). It is important to distinguish between nature and convention. As Strauss (1953:90) puts it:

> The 'customs' of natural beings are recognized as their natures, and the 'customs' of the different human tribes are recognized as their conventions. The primeval notion of 'custom' or 'way' is split up into the notions of 'nature', on the one hand, and 'convention', on the other.

Within the context of the above stated quotation, we take "natural beings" to mean "reasonable beings" (Rundell, 2002: 943).As used in the quotation, "custom is synonymous with "way". To talk about the customs of natural beings is to refer to what they usually or traditionally do. Alternatively, we are talking of their ways of doing things (Rundell, 2002: 342). These ways are said to constitute their natures in the sense of representing some of their qualities (Rundell, 2002: 944). Similarly, we take the customs of the human tribes to mean their ways of doing things. These ways have become conventions in the sense in which they are "generally accepted as being normal and right" (Rundell, 2002:305). We should note that "nature" and "convention" are like two sides of the same coin, "customs". This appears to be in the sense in which they are both defining characteristics each of natural beings and human tribes respectively. The defined features of human tribes occupy a higher plane because their acceptance as normal and right is consensual.

Conceptions of Natural Rights

An adequate reflection on the idea of natural rights requires an examination of the views which different individuals have expressed on it. Some of those who have commented on the doctrine of natural rights include Socrates, Plato, Aristotle Aquinas, Hobbes, Locke, Rousseau. The conception of natural rights by classics such as Socrates, Plato and Aristotle - otherwise called classic natural rights doctrine - acknowledges the cleavage between nature and law (convention). According to Strauss (1953:121), "the classics presuppose the validity of that distinction when demanding that the law should follow the order established by nature, or when speaking of the co - operation between nature and law".

For the classics, natural rights - in the strict or narrow sense of right - originate from man's natural sociality. Generally, the classics have found fault with hedonism. They claim that apart from the fact that the good and the pleasant are not identical, the former is even more significant that the latter. As Strauss (1953:126) puts it, "the primary fact is not pleasure or the desire for pleasure, but rather the wants and the striving for satisfying them". We support the contentions of the classics and Strauss. This is because their

positions presuppose the distinction between intrinsic good and instrumental good. An intrinsic good is what is desirable, worthwhile or worth-having for its own sake; for example, happiness. On the other hand, an instrumental good is what is required for the attainment of other things - that is, good in so far as it leads to other things. Some examples are money and productive work (Hospers, 1981: 582).

Strauss distinguishes between three types of classic natural rights teaching; namely, the Socratic - Platonic, the Aristotelian, and the Thomistic. Socratic Platonic natural rights teaching can be summarized thus:

> Justice is the habit of giving to everyone what is due to him according to nature... The just man is he, who gives to everyone, not what a possibly foolish law prescribes, but what (by nature) is good for the other. (Since) not everyone knows what is good for man in general, and for every individual in particular...only the wise man truly knows what is good in each case for the soul. This being the case, there cannot be justice, i.e. giving to everyone what is by nature good for him, except in a society in which wise men are in absolute control (Strauss, 1953:146-147).

We can deduce from the above stated quotation that Platonic natural rights teaching presupposes the existence of a just society ruled by wise men, just individuals, an understanding of what is generally and particularly good, of human nature, and the willingness to do that which is just and good. The teaching seems to have ignored the multidimensional nature of the concepts of goodness and justice. Apart from the conception of justice which the teaching presents, it also makes sense to talk about legal justice, social justice, and natural justice, to mention a few. Whatever the sense of goodness or justice employed, it is difficult to have a just and good individual and, or, society. Nor is it easy to have a consensus on what is particularly or generally good.

Apart from the aforementioned definitions of good, there is also the problem of having to contend with which standard of goodness to appeal to – God, law, customs or society, reason, conscience, intuition, revelation, among others. In addition, the idea of human nature is controversial. Generally, nature can influence the human person especially his or her understanding of things and willingness to act “rightly” and, or, “justly”. In this regard, we need to take cognizance of genetic influences, childhood experiences, negative and positive emotions and instincts, and influences of the subconscious, for instance. Besides, intelligence quotients differ. This fact suggests degrees of human rationality. Furthermore, the teaching under consideration has to excuse the psychopath, the kleptomaniac, and the insane, to mention a few. The extent of each infirmity determines the degree of the exception of those concerned from the class of moral agents. The above mentioned mental, and, or spiritual states influence the judgments and actions of human beings including the supposedly wise men and women. The foregoing remarks are not meant to suggest that consensus cannot be reached

on the issues involved. That each human society operates on some conceptions of goodness, justice, rationality, wisdom, for instance, shows the possibility of having some agreements. This paper has tried to draw attention to the intricacies associated with the issues and the need for caution in addressing them.

According to Aristotelian natural rights teaching, the class of natural rights is included in the class of political rights. Furthermore, a natural right must be changeable if it is to be effective in checking the "inventiveness of wickedness". It is Aristotle's belief that the right which obtains amongst members of the same community is the "most fully developed form of natural right". Thomas Aquinas affirms that the principles of natural rights, the axioms from which the more specific rules of natural rights are mutable are only the more specific rules (e. g., the rule to return deposits) (Strauss, 1953:157).

Apart from classic natural rights doctrine, mention can also be made of modern natural rights doctrine expounded by Thomas Hobbes, John Locke, and Jean Jacques Rousseau, among others. Hobbes (1968: 188) asserts that a natural right which is totally independent of any human compact or convention is the right to self – preservation. In his opinion, this right is absolute or unconditional. It is a right which no one ought to violate. If anyone is commanded to take his own life, he is at liberty to disregard the order. John Locke (1963 : 323-332) recognizes rights to life or self – preservation, freedom, and property as natural rights. These rights are innate and inalienable. He gives prominent attention to the right to own private property. Like Hobbes, Locke insists that human beings reserve the right to object to any violation of their natural rights. Jean-Jacques Rousseau (1973: xxxv) claims that man has natural freedom, which can neither be renounced by each man nor restricted by any external agent without free consent. In other words, the natural right to freedom is an unalterable right This natural right to freedom includes the right to self-preservation and the right to appropriate "the means required for self-preservation" (i.e., the right to property).

Some of the declarations or resolutions of the United Nations Organization (U.N.O) support the idea of natural rights. For instance, the genocide occasioned by the first and second world wars prompted the U.N.O. to make a declaration that human beings have resolved "to re-affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." This resolution is, among other things, meant to emphasize the need for every person to recognize and promote the sanctity of human life. The declaration reflects the Preamble to the American Declaration of Independence and the Preamble to the French Declaration of the Rights of Man. A passage from the American Declaration of Independence reads:

> "We hold these truths to be self -evident, that men are created equal, that they are endowed by their creator with certain

> inalienable rights, that among these are life, liberty and the pursuit of happiness" (Strauss, 1953:1).

The Ideas of Inalienable and Absolute Rights

The idea of natural rights is synonymous with the idea of inalienable rights. That is, "rights that cannot be given away or taken away" (Hornby, 1974:429). This synonymity is evident from a consideration of the conceptions of natural rights aforementioned and the assertion that inalienable rights include rights of "enjoying and defending life and liberty; acquiring, possessing, and protecting property; pursuing and obtaining safety and happiness" (Davitt, 1959:97). The idea of natural or inalienable rights can be said to be the precursor of the idea of human rights. That is, "those rights that all people are or should be entitled to (by virtue of their being human beings). (Some of them are rights to) a fair trial in a court of law, access to medical care and education, (and) freedom of religion" (Hornby.1974:731). Considering the above stated definition, it seems the idea of natural or inalienable right has been reduced to the idea of human rights. It is important to note that the definition of inalienable right given above is an alternation or disjunction.

Let us consider this definition in the inclusive and the exclusive senses each under possibilities. In the inclusive sense, a right - for instance, the right to life - will be inalienable if it is true that it can neither be given away nor taken away. It will also be inalienable if it is true that the right holder cannot give it away and false that an external agent cannot take it away, and vice-versa. However, a right will not be inalienable if it is both false that it cannot be given away and that it cannot be taken away. In the exclusive, sense, on the other hand, a right will be inalienable if it is true that it cannot be given away albeit it is false that it cannot be taken away, and vice-versa. Furthermore, a right will not be inalienable in the exclusive sense if the two disjuncts are both true and false.

As hitherto stated, Hobbes argued that the right to life, among others, cannot be taken away. If this is true, it means that the right to life is inalienable both in the inclusive and exclusive senses. Rousseau affirms that the right to life cannot be given away by the right holder. If his claim is true, it follows similarly that this right to life is inalienable in both senses But Stuart Brown denies that the right to life, among others, is inalienable. By this, he means that it is both false to say that the right cannot be given away or taken away (inclusive and exclusive senses». He also means that it cannot be both true that the right to life cannot be given away or taken away (exclusive sense). It is note worthy that Brown supports his denial with the claim that the violation or withdrawal of this right may be usually morally justified (Dworkin, 1977:192).

Both Hobbes and Rousseau affirm that inalienable rights are absolute - that is, “complete”. “perfect”, or “unconditional”. But for inalienable rights to be absolute, it must be the case that they can neither be given away nor taken away. That is, it ought to be impossible to violate or withdraw them

under any circumstance. Neither Hobbes' nor Rousseau's initial assertion implies that right to life, among other natural (or inalienable) rights, can neither be given away nor taken away. For Hobbes, it cannot be withdrawn by any external agent without an adequate justification. This may be true. However, he is silent on the possibility of the individual choosing to surrender his right to life (e. g., suicide). To this extent, Hobbes' conception of inalienable rights as absolute
rights is inadequate.

Furthermore, we hold that Rousseau's position is faulty for a similar reason. He fails to realize that it is possible for an external agent to withdraw a supposedly natural or inalienable right. Despite the fact that the right holder cannot choose to renounce it, this possibility remains. The foregoing considerations, in our opinion, inform Brown's denial of inalienable rights to life, freedom, to mention a few, as absolute rights. He asserts that the only right that is inalienable and absolute is the right to the protection of life, freedom, etc. "private goods" (Dworkin, 1977:192). Brown's claim is debatable. It may be logically and morally impossible to deny the right to the protection of life, liberty etc. However, it is still physically possible to deny this right if this is granted, then this right is not absolute. However, If Raphael's claim that all natural rights are by and large rights of recipience against all men is true, it is deducible that the natural right of each person to life, for instance, corresponds to the natural or moral duty of others to preserve his or life or not to interfere with it.

Criticisms and Counter-Criticisms of the Concept of Natural Rights

The idea of "a natural right is simple nonsense, natural and imprescriptible rights rhetorical nonsense, nonsense upon stilts" (Dworkin, 1977:54). Conventionalists also deny that any right is natural. According to them, "right is conventional" because it belongs essentially to the city and the city is conventional (Strauss, 1953:108). Conventionalism rejects natural rights because each society determines "the just things". Strauss asserts that the contemporary rejection of natural rights leads to nihilism and is even identical with nihilism. Socrates and Plato argue against conventionalist rejection of natural rights. They insist that the prevalence of different notions of justice should not be used to deny natural rights. The reason is that the existence of natural rights does not require actual consent of every man concerning the principles of right but potential consent. (Strauss, 1953:5 & 125).

CONCLUSION

We have examined some conceptions of natural rights. Broadly, they can be divided into two categories; namely, egalitarian and non - egalitarian natural rights doctrines. Proponents of the former include Hobbes, Locke and Rousseau while some of the exponents of the latter are classics such as Socrates, Plato and Aristotle. Whereas the exponents of egalitarian natural rights accord primacy to consent and regard wisdom as secondary, the proponents of non - egalitarian natural rights subordinate consent to wisdom. We have argued that the concepts of natural, inalienable and human rights are synonymous. Most, if not all, of these rights are legal rights. We have also specified the conditions under which these rights may be alienable or inalienable. The argument that some of these rights - e.g., the right to self - preservation - are absolute has been shown to be invalid. We have stated the criticisms and counter- criticisms of the idea of natural rights. The conventionalist proposition that each society determines the just things is plausible. But this, in our opinion, does not constitute adequate evidence for their rejection of natural or inalienable rights. If a society approves of and upholds certain rights, this approval does not necessarily make those rights inalienable or natural. If, on the other hand, a society disapproves of and violates certain other rights, it does not necessarily follow that the rights are not natural. Approval or disapproval (violation) of rights by a society shows more or less the degree of importance it attaches to them. It is deducible from the foregoing considerations that societal determination of just things is compatible with inalienability of certain rights.

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