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Philosophical Foundations of Human Rights

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Abstract

Human Rights are a set of moral norms and political concepts defined to make a holistic consensus on a general ethical principle, treatment patterns and protect individuals and groups from social and political abuses. This phenomenon is known as the shield and the protector of the human virtue, human dignity and the essence of humanity in the modern era. Even though human rights found an international consensus in the context of Universal Declaration of Human Rights, matriculated by the Third United Nations General Assembly in 1948, and equipped the national and international laws with a general and universal framework, its philosophical genealogy and conceptual

historic background is rooted in the Western political history. To succinct, this text multi-factionalizes the scope of analysis of human rights. It approbates the universality of human kind from a political perspective, accounting the human rights as a political modern phenomena and traces and infers its roots in the texts of the 1776 American Declaration of Independence, the 1789 French Declaration of Rights of Man and the Citizens and in the 1948 Universal Declaration of Human Rights. Furthermore, it ratiocinates human rights as a historical progressive notion, and repudiate its essence underlying a metaphysical construction.

Keywords: Human Rights, Natural Law, Enlightenment Era, Universality

Introduction

Human rights as a string of laws to protect basic human rights is a modern concept. The roots of human rights as a modern concept go back to the 1776 US Declaration of Independence and the 1789 French Declaration of the Rights of Man and Citizens' texts. Notwithstanding, the historical and philosophical roots of human rights are not modern. These roots are ancient and include a wide range of philosophical controversies. This article first examines the origins of human rights in the concept of "natural rights" in Greek and Roman philosophical texts. Then, it shows the transformation of the metaphysical foundations of natural law theory of ancient Greece and ancient Roman in the issue of human rights into a religious text and the metaphysical foundations of Christianity in the sacred text and theology of the Middle Ages. In a chronological review, the Renaissance and the Age of Enlightenment are scrutinized and the modern theories of human rights are extracted from the philosophical text of the Age of Enlightenment. At this age, metaphysical basis of the concept of human rights were deconstructed. Ultimately the metaphysical foundations of human rights are reduced to the level of legal positivism at the Enlightenment era in order to gain legitimacy and authority in the modern state-nations. Finally, the Universal Declaration of Human Rights of the United Nations is reviewed as the pinnacle of legitimacy and authority in the modern era and it is free of any universal and metaphysical foundations. This legalized text is backed by a coercive power, the Security Council of the United Nations.

The Philosophy of Human Rights in the ancient Greece and Roman

Prior to the modern subjective comprehension of the human rights, rooted back in history, mankind experienced the prevalence of an objective ethical notion. To this credit, human deeds are harmonized with an all-encompassing, eternal and universal set of laws. The prime philosophical understanding of human rights maintains a metaphysical infrastructural, which in turns shifts to the theological doctrines of Christianity in the medieval era. This metaphysical order was deemed with the vocabulary of natural law (Langlois, 2009: 12) ^[9].

Plato eloquently wrote in *The Law* on an all-encompassing natural order. He emphasizes on its normative quality and its in-deep integration with the universal laws. Furthermore, he imputes an ultimate purpose and objective for this set of law as justice, virtue and reason (Bobonich: 2010) ^[1]. Plato expedite this polemic in his masterpiece, *The Republic*, as he advertises "just actions" by individuals and state, adversely in the era of warfare writes against the ravage of lands, protecting civilians and burning houses. Another substantive contribution of his metaphysics of moral is the instinct equality he believed the nature

endowed to both men and women. According to him, the natural equality amid these genders, eventuates in equal opportunities in the public spheres and both benefit from the preponderance of the equal educational system (Plato, 1987: 163-166)^[12].

This idea of natural law fiercely is emphasized in the *Politics and Necomachean Ethics* of Aristotle. The incipient distinction of natural law and positive law is seen in the mentioned works of Aristotle, as for him the priority goes to the natural law in the case of dispute. To concise, according to him, concepts of justice and rights, adjacent and parallel in theory and practice, are natural. To this end, the natural justice and the natural rights are the natural law in the structure of nature that the laws of government are required to conform their text to the framework of it. It's of much worth to say, in a primitive format, Aristotle wrote on the polemic of rule of law. For him, the rule of law is obligatory. This obligation is in the context of a natural quality, which tends to demolish and fade the efficacy of the authority and protrude of power over individuals (Brooks and Murphy, 2003)^[12].

Jes Gentium, translated as "law of people", renown as the Roman's substantial contribution to the human history was written on the readings of Cicero's philosophy of natural rights. For him, in *The Republic and the Laws*, there are principles of natural law. The implementation of these principles of natural rights ensues into creating the sense of responsibility and rights to people. For him, as for Plato and Aristotle, concepts alike justice found in the nature prior to the decrees of government or rules of conducts and norms. These laws are unalienable, unchangeable, and neither individual nor the holder of the power can exempt from. Citing from his own writings:

(True) law in the proper sense is right reason in harmony with nature. It is spread through the whole human community, unchanging and eternal, calling people to their duty by its commands and deterring them from wrong-doing by its prohibitions ... This law cannot be countermanded, nor can it be in any way amended, nor can it be totally rescinded. We cannot be exempted from this law by any decree of the Senate or the people ... There will not be one such law in Roman and another in Athens, one now and another in the future, but all peoples at all times will be embraced by a single and eternal and unchangeable law (Cicero, 1998: 68-69)^[13].

And:

Most foolish of all is the belief that everything decreed by the institutions or laws of a particular country is just. What if the laws are the laws of tyrants? If the notorious Thirty [a group who abolished the law courts and instituted a reign of terror and murder] had wished to impose their laws on Athens ... should those laws on that account be considered just? No more, in my opinion, should that law be considered just which our interrex passed [a bill creating unlimited powers], allowing the Dictator to execute with impunity any citizen he wished, even without trial. There is one, single, justice. It binds together human society and has been established by one, single law ... Justice is completely non-existent if it is not derived from nature ... [V]irtues are rooted in the fact that we are inclined by nature to have a regard for others; and that is the basis of justice (Cicero, 1998: 111-112)^[13].

The concept of human right is latent in the philosophical texts of ancient Greece and Roman. It's hidden and is perdu

under the ceiling of natural rights. It's nurtured as a substrate of modern concept of human rights. Common good, justice, equality and egalitarian principles, rule of law, virtue and reason are the body of the natural law's metaphysical philosophy of ancient Greece and Roman. Notwithstanding, philosophically, the idea of natural law as a universal law underlying a metaphysical basement is destitute of reason. For the meaning, a metaphysical foundation, by reason and rationality, is in necessity to be firmly-fixed on an infrastructure. This is to give meaning and reason to the foundation, else by nature a non-foundational basement of natural law is devoid and thus is defined absurd.

The scale of natural law theory of Greece and Roman philosophers' influence is followed by church dominance period of medieval age. In this age, the Greece and Roman philosophy of natural law found a new foundation. The metaphysical basement of natural law demolished and reduced to the Christian theology. It remodeled the foundation of natural law from a universal objective model to a theological model. The purpose of natural law is ergo bestowed by God. Momentous event of this age is not the conversion of basement however, but is the institutionalization of a natural law theory by the authority of church for the first time in the mankind history.

Christian Model of Human Rights

Dignity of mankind is the frontage of human rights theories. Dissimilar in the foundation, all theories of human rights possess an offshoot and wing of the concept of dignity. Chronologically, the genesis of dignity concept stands on the Christianity's concept of *Imago dei*- man is made in the image of God. With credit to this, the dignity of man is relying on the character of God, and is therefore disposed to be in possession of rights and freedom (Langlois, 2009: 18)^[9]. To this end, man stands as the ultimate design of God and by nature have domination over other creations (English Standard Version Bible. 2001: Genesis 1:26)^[5]. This ultimate design of God is a "God's image-bearer" with adornments of rationality, self-determination, self-transcendence, self-consciousness and freedom of choice (Fienberg, 1972: 235, 246)^[6]. The unfathomable point in the text of bible is the universality of human rights. To expound, practicing the Christian morality and Christian identity is of no importance in the text of bible, but by instinct and nature human beings are in disposal to live in an equal manner. Furthermore, the doctrine of Christian morality does account human consciousness as the distinguisher, discernor, assessor and prognosticator of good and evil. Again, for the latter one, mankind is inherently apt to (English Standard Version Bible. 2001, Roman 1:18-23)^[12].

Summa Theologie, the masterpiece of medieval age, written by Christian philosopher and theologian, Saint Thomas Aquinas, condense the essence of its text on the natural law, which by its temper and quiddity is just. It's founded underlying a divine purpose. The purpose for Aquinas is realization of man's dignity and reaching full development. Meanwhile, according to Aquinas, conformity of one with the natural law, bestowed divinely, adopting and pursuing a behavior with the centrality of justice, feeds and satiates a life with the handsel of love. Another influence of this practice of morality is the spread of this life format in a broader community. An important facet of Aquinas's philosophy is the bridging he tends to provide amid positive

laws to natural law. For him, every positive law is empty of justice until it approbates and conforms to natural law. To this end, man is free to disaccord and oppose to any positive law empty of a just meaning, a just purpose and a just manner. If the positive law is of no just purpose, for him, it's no law but only has the appearance of law (Aquinas, 2000: 44-47).

The practice ground of Christianity's moral principles adumbrated an adverse exhibition of prosecution, subjugation of women, slavery, assimilation and discriminations. It then institutionalized upon the 313 Edict of Milan and the eventual transformation of Christianity into the state religion. The massive level of un-humane church and its practitioners' acts and canons also found a bed of justifications by profound theologians, like St. Augustine's positive vote to the persecution of Donatists (Reuter, 1975: 258) ^[13].

The interpretation of natural law with a theological foundation is devious and absurd in the same way of the Greece and Roman's metaphysical moral philosophy. The shift from metaphysics to supernatural is devious by reason. It's empty of sense to replace the foundation of natural law from "universally objective" and "laws in the nature" to "laws bestowed by God". Still, the foundation holds a reticence position. Still, the foundation itself has no reasonable authority to impose a natural law universally. To succinct, declaring God as the source of natural law is subject to proving, affirming and corroborating its existences. Furthermore, it's postulated to prove and assert the text of the declared natural law is essentially universal set of rules of conduct structured divinely. It's a critique on scrutinizing the legitimacy of Christian model of human rights. Meanwhile, the essence and the existence of religion pluralism is worth to be mentioned. Not all human beings practice Christianity.

The reason of man gradually dislocates the word of God. History witnessed the advent of theories human rights centralized on moral autonomy of the individual, liberty and freedom derived from natural humanity not God's natural law (Lacey, 1991, p. 61) ^[10]. Although modern human right theories start with John Locke's theory of natural right gifted by God to fulfill his pleasure, the foundation of a divinely created natural right was demolished, reduced and faded gradually. It evolved to man's reason in the current age, and to some degrees and extends the innate virtue and dignity of mankind. With the collapse of Christianity's metaphysics, the innate dignity of human beings procured the dominance in the Western philosophy.

The Evolution of Human Rights in the Modern Era

Social forces' efficacy on the progression of human right concepts have significances. The decline of Feudalism as the dominant political system in the medieval age, the separation of government's authority from the institution of church, and the resistance of Protestantism with the will to translate the Bible into the vernacular language, the expansion of literacy rate underlying the historic shift of Latin version of Bible to local, especially English version, the emersion and apparition of nation-states and nationalism in turn transformed and mutated the societies in Europe from the monopoly of Church period, stated as medieval age, to the age of Renaissance and it then followed by the Enlightenment era. In turns, individualism, private property rights, emancipation, greater tolerance, freedom of religious,

freedom of belief and opinion were the offspring of these movements. At least in the text, these rights casts aside no political or social position, race, ethnic groups, sex and age. English revolution and the Petition of Rights in 1628, with articles of reaffirming due process, the rule of law, imprisoning by no cause and a stand against the implementation of martial law in the peace period significantly influenced the road of history. In 1679, the Habeas Corpus Act, enacted by parliament, promised protection against arbitrary arrest. Followed by the 1689 Bill of Rights, the Great Britain transformed from an absolute monarch system to a constitutional monarch, rejecting the divinely right of the kings, the prevailing of the parliament orders over the crown was enacted and the exert of the rule of the law on the royal power was emphasized. Furthermore, the Bill of Rights articulated the importance of the rule of law as the savior and protector of the rights. The right to be free from royal interference with the law and the courts, the right to free elections for representative government, the right of freedom of speech in Parliament, the right to a trial by jury, and the right to be free from excessive bail or 'cruel and unusual' punishment are of the revolutionary laws in the Bill of Right.

In the quasi-secular Europe Hugo Grotius was the bridge over the natural rights theory of medieval canonists and post-Reformation to Modern Protestant political theorists (Finegan, 2012: 190). For him, human rights derived not from natural law, ordained by God, but is based on the basic humanity (Langlois, 2009: 14) ^[9]. The Father of Modern International Law's conception of moralities was of same modality as of physical law. Defined independent from political authorities, the law maintains a predominance status above all government institution. Moreover, by nature, this law is the measurement of the positive laws. Simply this is a roll-back to the Greece and Roman metaphysics.

What distinguishes Grotius is his works on the concept he used as "laws of nations". According to him, at the time of war, a set of legal norms are a necessity to inaugurate criteria of a just war (Haakonssen, 1996) ^[7]. Samuel Pufendorf develops and enlarge Grotius's theory of law of nations with an emphasis of not narrowing it to the West and Christendom, but of a universal community (Dennis, 1915: 402-476) ^[4]. This is understood as the basic of what is renowned as international humanitarian law in the contemporary era.

John Locke, in the same context with Grotius, wrote on the universality of natural rights. However, for Locke, this universality is gifted by God. For the meaning, Locke's perspective on human rights is based on a scope of Christian metaphysics. For him, among all, the right to live, liberty and property is of the highest value. Although the foundation of the human rights in the logic of Locke is of no progress, but the basic rights of life, liberty and private property he worked on are of the much importance in the modern era. Citing from the *Two Treatises of Government*:

A title to perfect freedom and uncontrolled enjoyment of all the rights and privileges of the law of nature equally with every other man or number of men in the world and has by nature a power not only to preserve his property-that is his life, liberty, and estate-against the injuries and attempts of other men, but to judge and punish the breaches of that law in others (Locke, 1947: 124-128) ^[8].

Chronologically, the concept of separation of power in government for the protection of the freedom and fundamental human rights in the *Spirit of Laws*, the seminal work of Montesquieu, the social contract theory of Jean Jacques Rousseau as the foundation of the a state's *raison d'être* by the general will of people and the role of the civil societies in the process of creation of institutions and promotions of rights with the emphasis of Kant on the ethical responsibility to vindicate the dignity of mankind are the progressions in the theory of human rights. This evicted the human rights theory from a philosophically confined circle of right to a more practical dimension.

The philosophers of the Enlightenment era furthered a de-structuring demeanor towards the natural law theories. From the conservatism perspective of Burke, the French Declaration of the Rights of Man and Citizen is criticized. The critique is predicated on the foundation of the rights rather the rights itself. To expound, Burke doesn't account a natural foundation of human rights as *prima facie*. For him, rights of men are of no universal objective or natural quality,

but is deemed to have only an institutional quality. Not only human rights are not universal, but by nature are pluralist, and are distinctive and different across the nation. The dominance of one set of law's format in the entire world is of tyrannical quality with an absolute hegemonic purpose. Followed by utilitarian perspectives, Bentham denounces the natural law and emblazons it as fanciful ones. According to his perspective, natural right are unreal metaphysical phenomena, non-sense and rhetorical. As of Burke, Bentham does ascertain positive rights and law as the only legitimate source of rights and law. In a radical scope, Karl Marx, though is opposed in ideology, but Marx eke out an anti-natural position to the characters of the Enlightenment era. Him criticizing the theory of natural right as unreasonable sets of steams, stands in adverse to former philosophers. Marxism's manifest enumerates the renowned and institutionalized set of human rights as a part of capitalism system. For him, rights to liberty, property and personal security preserve and secures the established capitalism system (Langlois, 2009: 15) ^[9].

Table 1: The Philosophers on the Rights of Man

<p>Bentham (1748–1832)</p> <p>How stands the truth of things? That there are no such things as natural rights—no such things as rights anterior to the establishment of government—no such things as natural rights opposed to, in contradistinction to, legal: that the expression is merely figurative; that when used, in the moment you attempt to give it a literal meaning it leads to error, and to that sort of error that leads to mischief—to the extremity of mischief. ('Anarchical Fallacies', see Bentham(1843))</p>	<p>Hobbes (1588–1679)</p> <p>The Right of Nature . . . is the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own Life; and consequently, of doing anything, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto. (Leviathan, see Hobbes (1968))</p>
<p>Burke (1729–1797)</p> <p>As to the share of power, authority, and direction which each individual ought to have in the management of the state, that I must deny to be amongst the direct origin alright of man in civil society; for I have in my contemplation the civil social man, and no other. It is a thing to be settled by convention. (Reflections on the Revolution in France, see Burke (1971))</p>	<p>Locke (1632–1704)</p> <p>Men being... by nature all free, equal, and independent, no one can be put out of his estate and subjected to the political power of another without his consent. (The Second Treatise of Government, see Locke (1952))</p>
<p>Marx (1818–1883)</p> <p>Thus none of the so called rights of man goes beyond egoistic man, man as he is in civil society, namely an individual withdrawn behind his private interests and whims and separated from the community. Far from the rights of man conceiving of man as a species-being . . . The only bond that holds them together is natural necessity, need and private interest, the conservation of their property and egoistic person. ('On "the Jewish Question" ', see Marx(1987))</p>	<p>Kant (1724–1804)</p> <p>So act that the maxim of your will can at the same time be a universal law . . . Treat all humans as ends in themselves rather than as mere means . . . Conduct yourself as a member of a kingdom of ends. (Groundwork for the Metaphysics of Morals, see Kant (2002)) (Edmundson, 2004 as cited in Langlois, 2009: 14) ^[9]</p>

Legitimization of Human Rights

The practice of human rights in an extreme model is experienced in the grand document of the 1776 US Declaration of Independence. Penned by Jefferson, the equality of mankind and freedom in an independent manner, as the main point of human rights, were formulized (Lauren, 1998: 17).

The formulization of rights in a positive-legal manner legitimized and gave a modern non-metaphysical foundation to human rights. To this end, rights as the savior and protector of mankind against an outlaw opt of government or positive laws filled by un-humane qualities is legitimized in the text of US Declaration of Independence. In turn, the grand document progressed, mutated and modified by the 1789 US constitution and the 1791 first ten amendments. Its extreme importance, though mentioned clearly that rights are given by God, is its positive quality. For the meaning, rights are legalized and found a non-metaphysical or divine foundation for the first time in the history. This revolution re-emerged in a more radical way in the 1789 French revolution against the monarch. It legalized and legitimized

rights of mankind against monarch system. Men is defined as a free entity by birth and is written equal in rights.

The Second World War (1939-1945) and its unimaginable catastrophe of the Holocaust, the de-Judaism and de-communication policy of Nazi regime in Germany, shocked the mankind's conscience and precipitate the crusade of brining a world-wide set of law. This is deemed as a collective response underlying a moral comprehension against an un-humane manner. The United Nations Charter (1945), followed by the Universal Declaration of Human Rights are the most powerful set of laws, centralized and concentrates on the concept of human rights.

The UDHR maintains the highest authority above all positive, legal and institutional laws across the world. Lacking any philosophical foundation, it's firmly-fixed underlying the human innate dignity. In an international stage, the UDHR is formulated by the human reason rather natural law or non-sense metaphysical statements. For the meaning, it's of no need to construct an abstract structure for the mean of objectivizing an "intersubjective" contract amid mankind. What is sensed necessary is the legitimizing of the

law and granting it authority. In turn, the UDHR preserves the highest legitimacy and authority. Furthermore, its authority is back-boned in a coercive stand-point by the United Nations Security Council.

Seemed as a risk, but technically and founded by reason, legal positivism seems to be the sole manner to institutionalize the moral demands of mankind, grant it an international legitimacy, authority and back it by coercive power. Its promulgation does not require any justifications to provide a universal objective source. What is demanded by conscience is to collect articles of this progressive-historic phenomena underlying a general conviction. To concise, the text to be legitimized is in required to be legalized and institutionalized. To this end, UDHR provided a model for the constitution of many domestic, international and NGOs laws (Morsink, 2009: 1) ^[11].

Conclusion

Human rights is a progressive concept. Historically, its cradle is the philosophical notions of natural law. It's an offspring of a moral metaphysics of Plato. Followed by medieval age, it progressed and through the authority of Church, moral doctrines of Christianity institutionalized for the first time in the course of history. The Renaissance and the enlightenment putted more of practice, modified, mutated, expand and theorized human rights with the mean of metaphysics, natural law theory, religious teachings and man's reason. At this age, the metaphysics of natural law was de-structured. It transformed into a format of positive law based on reason. Furthermore, with the US Declaration of Independence and the French Declaration of the Rights of Man and Citizen, human right theory found a positive-legal legitimacy. Its highest degree of authority and legalization, right after the Second World War, was formulized in the Universal Declaration of Human Rights text. The text of the UDHR legalized a set of moral demands in an international arena. In turn, it's defined as the highest authorized and legitimate laws in the history of mankind.

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