HUMAN RIGHTS IN THE LIGHT OF THE CONCEPTS OF NATURAL LAW

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Abstract: The aim of the article is to point to the connections that combine the modern concept of human rights and selected theories of natural law. The author's goal is to indicate that the common element of the concept of human rights and natural law is the concept of human dignity. Historically, the concept of human rights can be regarded as a result of different conceptions of natural law developed by various thinkers for many centuries. The author of the article uses theoretical analysis. The research question concerns the relationships between theories of human rights and selected concepts of natural law.

Keywords: Human Rights, Natural Law, Positive Law.

1. Introduction

The issue of human rights is one of the key problems that has accompanied European culture since ancient times. This is demonstrated, among other things, by the birth of democracy in ancient Greece. The first human rights document in Europe was the Magna Carta from 1215 which gave people new rights and made the king subject to the law. The greatest achievement in the fight for human rights is The Universal Declaration of Human Rights (UDHR) enacted in 1948 by United Nations - the first document listing the 30 rights to which every human being is entitled. It is the first internationally accepted document in which human rights are treated as universal. They are universal because they belong to no one civilization, nation neither philosophical nor religious system. Human rights according to The Universal Declaration are deeply embedded in the nature of each member of the human family (Johnson, and Symonides, 1998). These both documents are the written precursors to many of modern human rights documents.

The author of the paper claims that today's human rights documents are rooted in the concepts of natural law. We have to keep in mind, however, that there is no one concept of natural law. From antiquity to modern times, the concepts of sophists, Aristotle, Stoics, Saint Augustine of Hippo, Saint Thomas Aquinas, Hobbes, Grotius and others should be mentioned. These concepts differ significantly from each other. The thinkers agreed, however, that statutory (positive) law should not violate natural law (and sometimes simultaneously God`s law) because the latter was seen as a higher legal order (Maciejewski, 2017). Positive law which was in conflict with natural law was usually considered invalid. Such a law was also considered unjust. For Christian thinkers natural law was considered as mirroring eternal law given by God. Positive law, on the other hand, was supposed to reflect the rules of natural law.

2. Fundamentals of the concept of human right

The concept of 'Human Rights' is almost as old as humanity. In India, for example, human rights jurisprudence has always been an issue of prime importance. Human rights are, however, essentially the product of European culture or more specifically democracy. Human rights can be defined as the rights which are most fundamental and inherent to the existence of each human being. Human rights were formerly called 'the rights of man'. The basis of the concept of human rights is the view that every human being has inalienable rights by virtue of being human. The only requirement to possess these rights for human being is to be born as human. According to the modern concept of human rights a man possesses them regardless of race, gender, tribe, origin or any social and political status (Nino, 1994). In short, therefore, they are universal rights.

The term 'Human Rights" was already mentioned in 1776 in in the United States Declaration of Independence. It was fully accepted, however, in 1948 when The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in Paris. Human rights are also sometimes called or referred to as 'Fundamental Rights', 'Basic Rights', 'Natural Rights' or 'Birth Rights'. This is a generic term which embraces various groups of rights including: 'Civil Rights', 'Civil Liberties' and 'Social, Economic and Cultural Rights'. The idea of human rights is connected with the idea of human dignity. Thus all those rights, which are essential for the maintenance of human dignity are called human rights (Chandra, 1999). In The Preamble to the Universal Declaration of Human Rights we read: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (…) Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind,

shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction'. And further in Article 1 of the Declaration you can read:' All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood' (UDHR). The words cited above are essential to grasp the connection between the idea of human rights and the concept of natural law.

Four basic defining features of human rights can be identified: (1) Human rights are rights; (2) Human rights are plural; (3) Human rights are universal; (4) Human rights have high-priority (Nickel, 2019). Rights focus on a freedom, protection, status, or benefit for the rightsholders (Beitz, 2009). Of course, one can add to the four features listed above a few more. One could ask, for example, if they are inalienable, have political function or impose moral obligations.

3. Evolution of human rights

The concept of 'human rights' is a 20th century name for what has been earlier called natural rights or rights of man. In Europe the milestones of this concept were Magna Carta of 1215, the Petition of Rights of 1628, the Bill of Rights of 1688, the American Bill of 1791 and the French Declaration of the Right of Men of 1789. They mark the path on which the individual obtained protection against the capricious acts of the ruler. It is worth mentioning, however, that the concept of human rights is not only the product of Western civilization.

In India the concept existed much earlier than in Ancient Greece and Rome in the form of a higher moral law prescribed by the Vedic philosophy. In *Vedas*, human rights are signified with the concept of equality. According to Vedic philosophy the happiness of the state lies in the happiness of its subjects (Madan, 2017). The approach to human rights has obviously evolved in India. The most interesting for us is the fact that the human rights perspective has accompanied Indian culture since its ancient beginnings. Its development shows the way to the concept of human rights. To sum up the history of the concept of human rights we can say that the language of human right is the product of European civilization but the concept of human rights is as old as the Indian culture and can be traced back to the fifteen century B.C.

According to Greek philosophers there exists one law of nature, based on reason, which is valid universally throughout the universe. Greek cosmopolitan philosophy was founded on the principle of equality of all men and the universality of natural law. Stoics were the most faithful representatives of this concept. Their ultimate ideal was a world-state where all people would live together harmoniously under the guidance of divine reason (λόγος). These philosophers proclaimed that people are essentially equal and all inequalities between them constitute

a violation of natural law (Dhand, 2002). At a time when slavery was widely accepted, the Stoics believed that slavery is contrary to nature. In other words, according to their views no one is a slave by nature, no one is better than another by nature. In spite of Stoic opposition, slavery existed in all Ancient societies such as the Greeks and had existed for several hundred years of Roman history (Bradley, 1994). This was due to economic reasons. As it is known, the Bible is the main source of Christian doctrine. This also applies to human rights issues. The main difference between the Biblical and the modern concept of human rights is that while in modern times human rights have been expressed as human rights, in the Bible they had long been treated as an integral part of every person's free will given to man by the Creator. The Biblical point of view of human rights is completely different from Greek. It should be remembered that in ancient Greece men were viewed as having rights, while women and children and other groups of people like non-Greeks were viewed primarily as property. There are many passages in the Bible that relate directly to human rights. In the Old Testament, for example, we read: "Learn to do good; seek justice, correct oppression; bring justice to the fatherless, plead the widow's cause" (Isaiah 1:17) or "Open your mouth for the mute, for the rights of all who are destitute. Open your mouth, judge righteously, defend the rights of the poor and needy" (Proverbs 31:8-9). The New Testament contains even more references to the rights of all people who were created by God.: "There is neither Jew nor Greek, there is neither slave nor free, there is no male and female, for you are all one in Christ Jesus" (Galatians 3:28) or "The Spirit of the Lord is upon me, because he has anointed me to proclaim good news to the poor. He has sent me to proclaim liberty to the captives and recovering of sight to the blind, to set at liberty those who are oppressed, to proclaim the year of the Lord's favor" (Luke 4:18-19) or "For freedom Christ has set us free; stand firm therefore, and do not submit again to a yoke of slavery" (Galatians 5:1).

In Christian times the early fathers of the Church in accordance with the Bible developed the concept that man is created in God's image and represents the supreme value in the world. Christian thinkers believed that Natural Law is above all human laws. St. Augustine claims that a law which violates justice is in principle invalid. The key to understanding St. Augustine's views on human rights issues is the distinction between nature and convention. Augustine, like the other Fathers, who accepted the stoic doctrine of natural law uses the terms "natural law", "eternal law", and "Divine law" interchangeably (Dyson, 2005). The result is a lack of precision in his reflection on these issues. Generally speaking, Augustine's concept of human rights seems to be very far from contemporary concepts because he subordinates natural laws to Divine law. The latter, however, he identifies with the positive law actually existing in his times. As a result, he considers, for example, as natural slavery, which is contrary to the modern understanding of human rights. Human rights issues were also undertaken by other Church Fathers like Origen, Cappadocian Fathers, John of Damascus, John Chrysostom and others. In their writings we do not find detailed statements on human rights. However, common to all Church Fathers was the view about the sanctity of every human person and his dignity. Being made in God's image is

enough to be a sacred being. Despite the religious context of their considerations, this view led to the recognition that every human person, regardless of race, sex, age, language, religious beliefs etc. is such a being.

The most outstanding scholastic philosopher St. Thomas Aquinas says that the legal rulers of society only possess the quality of law if they act according to the natural law discovered by reason. The natural law is a reflection of the eternal law given by God who is the creator of all things. Aquinas argues that man is a rational creature that applies the eternal law to human affairs by distinguishing the good from the bad. However St Thomas did not use the term "human rights" his concept of natural law was extremely influential in the development of modern human rights discourse. Saint Thomas was not the only scholastic who contributed to the development of the concept of human rights. Also other scholastic thinkers like Duns Scotus and William of Ockham should be mentioned. Thomas' influence over later Scholastic and humanistic philosophers like Vitoria, Suaréz, and Grotius, who dealt directly with sovereignty, slavery, and international law, make his conception extremely important in the process of evolution of the Western concepts of human rights.

In the Judeo-Christian tradition the concept of human rights starts with the idea of the creation of man in the image of God. Human life possesses intrinsic value by virtue of its divine endowment. The Jewish and Christian understanding of human rights is entirely a function of the absolute value of humanity granted to every person. This statement provides an explanation as to why human beings are given certain basic right. Every human person has dignity regardless of social differences. It is because of the high value placed on human beings and the dignity given that all are given certain basic rights. There is also another important aspect to the Judeo-Christian thought. This is the idea of duties towards all. One should act with respect towards one another because divine regard is given to all human beings. Some scholars believe that the Judeo-Christian tradition provides a more comprehensive theory for human duties than human rights (Novak, 1996). All people are bearers of basic and inalienable human rights, as long as they perform a set of minimum human duties. The concept of duty can also be seen when one looks carefully at the Universal Declaration of Human Rights. In Article 29 we read: 'Everyone has duties to the community in which alone the free and full development of his personality is possible'(UDHR).

Regarding the attitude of different religions to the issue of human rights it must be said that the major religions give stress upon duties rather than rights. Buddhism, for example, emphasizes the welfare of all beings as a state duty (Mehta, Verma, 1999). The human rights concept is in alliance with Buddhism in the faith in man as an individual. The idea of human rights is also present in Vedic scriptures of Hinduism. The Vedas, religious works of the ancient Hindus, pay much attention to religious and social obligations. Law according to Hindu philosophy is that rule of conduct authoritatively imposed by the divine power as proper for man, as a being capable of eternal existence governing all his activities, public and private.

Summing up the above considerations, it should be stated that in Western culture the concept of human rights has its source both in the views of Greek philosophers and their Christian and secular continuators of the modern era. It is worth noting that human rights issues have also appeared in other cultures, like India, and religions. This fact seems to support the thesis that this is a universal issue. The Universal Declaration of Human Rights adopted by the United Nations General Assembly in the twentieth century is therefore the culmination of a long process of evolution of humanity consciousness of possessing inalienable universal rights by every human being.

4. Concepts of natural law

The concept of the natural law is as old as human thought. It is worth noting that the idea of a natural law can emerge only when people come to think that not all law is unalterable and unchanging divine law (Rommen, 1998). The philosophical conception of the natural law first appeared in ancient Greece. At the very beginning of the Greek philosophy of law a distinction came to light, a distinction between two conceptions of the natural law. One is the idea of a revolutionary and individualistic natural law essentially connected with the basic concept of the state of nature and with the concept of the state understood as a social unit which rests upon a free contract. The other is the idea of a natural law that does not exist in a mythical state of nature before the laws, but in them. The first of the two concepts is not grounded metaphysically, the second is strongly rooted in metaphysics. It is interesting that the notion of God as supreme Lawgiver is strictly connected with the latter conception. Both of these tendencies are already plainly visible in the first Sophists and in Heraclitus, the great forerunner of Plato.

Greek philosophers in particular Plato and Aristotle distinguished between what is naturally just and what is legally just. Modern understanding of natural law has a definite Christian connotation. In Ancient Greece law was considered as a thing of human reason alone. Besides, the word law means today something laid, proclaimed, written. For Greeks, natural law is unwritten, and, as such, cannot always be defined and grasped easily. Natural law is universal which means that all men have a natural, infallible and practical knowledge of it. The basic principle of natural law in terms of ethics says that man must do good and avoid evil (Aquinas, 2006). Socrates declared himself the slave of the law. In the *Crito* he admits the absolute sovereignty of the law. Stoicism provided the most complete classical concept of natural law. The Stoics claimed that the cosmos is governed by divine reason, or rational principle. They also argued that all people have reason within them and can therefore know and obey its law.

The key point of the Christian concept of natural law is that the natural law is a participation in the eternal law (Aquinas, 2006). Whereas the eternal law is the rational plan by which all creation is ruled. In other words, the natural law is the way that the human being participates in the eternal law. All creatures also nonrational beings have a share in the eternal law but only by being determined by it. On the other hand, rational beings like people are able to grasp their share in the eternal law and freely act on it. Law can be defined as a rule of action put into place by one who has care of the community (Aquinas, 2006). As God cares of the whole universe God's choosing to create beings who are able to act freely and in accordance with principles of reason is enough to justify our thinking of these principles of reason as law. Natural law constitutes the fundamental principles of practical rationality. According to Thomas Aquinas the natural law is an aspect of divine providence. What is important the precepts of the natural law are also knowable by nature and all men possess a basic knowledge of the principles of the natural law. This makes that law universal. The two most important features of natural law in the view of Thomas Aquinas are: its role in divine providence and the universally authoritative character of its norms.

The history of natural law can be briefly summarized in the following words: Natural law concepts exist since Antiquity. It was made universal by the Stoics, incorporated into positive law by the Romans, allied with Christianity, and finally raised to its highest exposition by Thomas Aquinas in his scholastic philosophy (Kwan, 2012). In modern times natural law theories, law (in its central cases) is a modality of authority, available in specifically political communities (Finnis, 2012). The concepts of natural law developed in Antiquity and the Middle Ages in modern philosophy were continued and modified by philosophers such as Thomas Hobbes, Hugo Grotius or John Locke. They did not contribute much to ancient and medieval concepts but their works directly influenced modern human rights legislation.

To summarize, all concepts of natural law can be divided into two groups: paradigmatic and nonparadigmatic. Murphy characterizes them as follows:' the paradigmatic natural law view holds that (1) the natural law is given by God; (2) it is naturally authoritative over all human beings; and (3) it is naturally knowable by all human beings. Further, it holds that (4) the good is prior to the right, that (5) right action is action that responds nondefectively to the good, that (6) there are a variety of ways in which action can be defective with respect to the good, and that (7) some of these ways can be captured and formulated as general rules'(Murphy, 2019). Thomas Aquinas was not the only paradigmatic natural law theorist. Thomas Hobbes, for example, was also a paradigmatic natural law theorist. In modern era natural law have been used either to defend a change or to maintain social status quo according to needs and requirement of the time. John Locke, for example, used natural law as a tool of change but Thomas Hobbes, on the other hand, used it to maintain status quo in the society.

There is an interesting reversal of concepts that occurred during the development of the European culture. It consists in the fact that for many centuries from antiquity, through the Middle Ages and modern era, philosophers did not use the term "human rights". In modern

times thinkers willingly use the last term, while the term "natural law" is used rather in religious context. Shortly speaking, being a modern concept, human rights theory is perceived as completely secular. On the other hand, some philosophers try to combine human rights concept with the religious tradition. It seems that both views can be accepted. The analyses of the theories of natural law developed by Christian philosophers, mainly Thomas Aquinas', show that it is possible to derive a limited set of positive rights from a disposition account of human nature. It is possible because rights are based on the duties grounded in the developmental features of human essence. Moreover, Saint Thomas's concept of natural law can be a source of both human and political rights. Modern concepts of natural law elaborated mainly by philosophers of the 17th and 18th centuries such as Hobbes and Locke were based on philosophical concepts such as rationalism, empiricism and materialism. Modern philosophers sought to discover and act upon universally valid principles governing nature, humanity, and society, including the inalienable "rights of Man," which were treated as a fundamental ethical and social principles.

5. Conclusions

The concept of natural law is a manifestation of man's search for absolute justice. The idea of a natural law from its beginnings was used to describe an orderliness or regularity that was not the product of deliberate human will. This was often accompanied by conviction that the natural law that emanates from God is superior to any law. The concepts of natural law have not only theoretical significance. Their practical value is a historical fact that they generated various libertarian movements throughout human history. But the greatest attribute of the natural law theory is its adaptability to meet new challenges of the transient society. Many thinkers share the view that human rights, like natural law, are more ethical than legal. Human rights can be treated as their legal representation.

Historically, concepts of natural law form the theoretical basis for documents formulated in the 20th century, headed by The Universal Declaration of Human Rights, which contains provisions regulating the basic principles of human rights. There are several features of natural law that find expression in human rights concepts: (1) Law is related to justice, reason, human nature and ethics; (2) Rules of human conduct emanate from a supreme authority, which in some conceptions is God, and are binding on all men everywhere; (3) Nature is an order of thing; (4) It demands equality for all men. All these features found expression in the basic, as far as human rights is concerned, document which is the Universal Declaration of Human Rights. The concept of human rights can be treated as a development of the older notion of natural law and natural rights common to all humanity. There is therefore a close relationship between the concepts of natural law present in European culture since ancient times and the modern concept of human rights.

References

1. Andrabi, A.A. (2016). Human Rights in Islamic Tradition. *International Journal of Humanities and Social Science Research, 2; 5,* 21-26. Retrieved from https://www.researchgate.net/publication/304541075_Human_Rights_in_Islamic_Perspec tive, 29.08.2019.

2. Aquinas, T. (2006). *Summa Theologiae.* Cambridge, New York: Cambridge University Press.

3. Beitz, C. (2015). The Force of Subsistence Rights. In: R. Cruft, S. Liao, and M. Renzo (eds.), *Philosophical Foundations of Human Rights.* Oxford: Oxford University Press.

4. Bradley, K. (1994). *Slavery and Society at Rome*. Cambridge: Cambridge University Press.

5. Chandra, U. (1999). *Human Rights*. Allahabad: Allahabad Law Agency Publications.

6. Cornish, P.J. (2012). A Case against State Sovereignty from the Natural Law Tradition. *Rocznik Tomistyczny, 1*, 33-48.

7. Dhand, H. (2002). *Teaching Human Rights: A Handbook for Teacher Education*. Bhopal: Authors Press.

8. Dyson, R. (2005). *St Augustine of Hippo. The Christian Transformation of Political Philosophy*. London: Continuum International Publishing Group.

9. Finnis, J.M. (2012). Natural Law Theory: Its Past and Its Present. 57 Am. J. Juris. 81, Retrieved from https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2091&context= law_faculty_scholarship, 31.08.2019.

10. Johnson, G.M., and Symonides, J. (1998). *The Universal Declaration of Human Rights: A History of its Creation and Implementation 1948-1998*. UNESCO Publishing.

11. Kwan, K. (2012). *Reflections on Contemporary Natural Law Theories and Their Relevance*, Retrieved from https://pdfs.semanticscholar.org/5193/030c384e99eace76c826af2b71ed 23023722.pdf, 31.08.2019.

12. Maciejewski, M. (2017). The Relationship between Natural and Statutory Law in Ancient and Medieval Concepts. *Politeja, 48,* 5-22. doi 10.12797/Politeja.14.2017.48.01.

13. Madan, N. (2017). History & Development of Human Rights in Indian. *Journal Of Humanities And Social Science, 22, 6, 9,* 1-6. doi 10.9790/0837-2206090106.

14. Mehta, P.L., and Verma, N. (1999). *Human Rights under the Indian Constitution. The Philosophy and Judicial Gerrymandering*. New Delhi: Deep & Deep Publications Pvt. Ltd.

15. Murphy, M. (2019). The Natural Law Tradition in Ethics. *The Stanford Encyclopedia of Philosophy.* Retrieved from https://plato.stanford.edu/archives/sum2019/entries/natural-law-ethics/, 30.08. 2019.

16. Nickel, J. (2019). Human Rights. *The Stanford Encyclopedia of Philosophy.* Retrieved from https://plato.stanford.edu/archives/sum2019/entries/rights-human/, 30.08.2019.

17. Nino, C.K. (1994). *The Ethics of Human Rights*. Oxford: Oxford University Press.

18. Novak, D. (1996). *Religious Human Rights in the Judaic Tradition*. Retrieved from https://heinonline.org/HOL/LandingPage?handle=hein.journals/emint10&div=12&id=&page=, 26.08.2019.

19. Plato, (2002). *Five Dialogues: Euthyphro, Apology, Crito, Meno, Phaedo*. Indianapolis: Hackett Pub. Co.

20. Rommen, H. (1998). *The Natural Law: A Study in Legal and Social History and Philosophy*. Indianapolis: Liberty Fund.

21. *The English Standard Version Bible* (2009). New York: Oxford University Press.

22. *The Universal Declaration of Human Rights*. Retrieved from https://www.un.org/en/universal-declaration-human-rights/index.html, 27.08.2019.