

Note on Foundations of Human Rights

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Abstract

The origins of human rights, otherwise foundation of human rights, are equally contentious with the concept of law itself. Philosophers approached the foundation of human rights from different vintage points, inter alia, religious grounded arguments, non-religious scientific inquiries and hybrid arguments. The article explores the various perspectives over the origins of human rights and the possible interpretation of these vintage points in the current understanding of human rights in their codifications.

Key Words: Note, Foundation of human rights, religious and non –religious

Introduction

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The concept has two terms human and rights. Rights can be defined as a claim against another or a choice or will of somebody to something; this is interest theory and will/choice theory of rights.² And hence, human beings claim or will is what human rights mean.

Upon the origins of human rights, there are different arguments expounded by different scholars and philosophers on the basis of different perspectives of understandings. The most common arguments are theological ground (sacredness and the human dignity), reason and the principle of generic consistency, Nietzsche's non-religious arguments in the death of God where human rights are socially constructed for self-interest, and Rorty's sentimentality and solidarity as a self-creating principle.

As has been said above, there are controversies and arguments expounded by different jurists and political philosophers over the origins of human rights. I think these lenses of understanding will perpetuate to the next generations due to the fluid nature of the concept and subjectivity of understanding over the concepts of origins of human rights.

I will consolidate the issues into four pillars of arguments and understandings over the issue of origins of human rights as their foundation stone for later development of human rights especially to the development of human rights after World War II, where untold sorrow and painful events had occurred to human beings violating human dignity and worth. These arguments are 1) Arguments on the ground of theological considerations (human sacredness and dignity) advocated by Michael Perry 2) Non-religious arguments by Nietzsche's social construction for self-interest on the death of God and its possible consequences on origins of human rights 3) Sentimentality, solidarity, and subjectivity for self-creating concept of Richard Rorty non-religious perspectives again and 4) Principle of Generic Consistency and Reason by Alen Gewirth for self-fulfillment.

Michael Perry Theological ground (Sacredness, the Human Dignity and Human Rights)

² George, W. Rainbolt. (2006). The Concept of Rights. (Springer P.O. Box 17,3300 AA Dordrecht, The Netherlands)

According to **Perry**, the center of the idea of human rights fundamentally lies on religious concept, the notion of sacredness of persons. He related the idea of human rights with religious grounds whereby God has created us in His image and provides natural law. He invoked R. H. Tawney's argument in his assertions of the idea of human rights and religious upon which their connectedness is discernible.

The essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another.³ To believe this it is necessary to believe in God.⁴

This is inescapably religious concept which bestows universal values of morality for human beings under one being, God, the super creator of the world in general and human beings in particular. If somebody believes in God who has created in his image and who instructed to love one another as brothers and sisters as he loves us, every individual will thrive to fulfill what God has commanded for his/her own sake. Jesus at least under Christianity has given a new commandment to love one another. This is a self-fulfillment for happiness and to achieve the transcendental purpose of righteous eternal life. However, if persons fail to treat others as brothers and sister, they will face an eternal punishment in the last judgment. For example, Sarah loves others and interested to feed the hungry. Was this for self-regarding or other –regarding reason? Pace Augustine said by doing this, we fulfill our created nature and thereby achieve our truest, deepest, most enduring happiness. Furthermore, self-fulfillment depends on self-transcendence where the meaning of our lives is to be found beyond ourselves when God comes for judgment in the last day. Religious people are more concerned about themselves than they are concerned about others. Moreover, failure to comply with God's commandments is to wither as a human being rather than to flourish and will miss the blessing afterlife in the last judgment.

³ Perry, Michael J. (1998). *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press), 13, as cited in Kohen, Ari. (2007). *In Defense of Human Rights: A non-religious grounding in a pluralistic world*. Routledge 270 Madison Ave, New York, NY 10016. P15 available at <http://libgen.org/get?nametype=orig&md5=C53677A66C34EE27997ABC395EF187E7> (Visited on 20 November 2012)

⁴ Ibid

Generally, Michael Perry asserts that foundation of human rights, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, is as a result of a belief on God's commandment to love one another.

The idea of human rights is indeed ineliminably religious, that a fundamental constituent of the idea, namely, *the conviction that every human being is sacred – that every human being is “inviolable”, has “inherent dignity”, is “an end in himself”, or the like* – is inescapably religious.⁵

However, this assertion of Michael Perry is challenged by different philosophers like Nietzsche, Heidegger, Rorty, Gewirth, Dworkin, and Marx for the following solid reasons:

- 1) Down the history of human beings concepts and actions have been moving in the opposite direction and hence, history of religion can be seen antithetical to the concept of human rights for example Iraqi's repression on the Kurdish minority.
- 2) The problem of different religious worldview and the existence of interpretative difference in different factions debilitates the concept of foundations of human rights to be religious grounded
- 3) What if individuals who did not believe in one supreme God exist in this world? The question of eternal life or eternal punishment will vanish
- 4) Nietzsche's death of God, nihilism, and the social construct for self-interest calculations defeat the assertion of Michael Perry and other religious grounded arguments
- 5) History of religion is history of war even under Christianity (e.g. atrocities were carried out in the name of God following the conversion of Roman Emperor Constantine in 312, the full scale warfare between Catholics and Protestants in Europe where millions were burnt, tortured and slaughtered, Muslims and Jews during the Crusades, unintelligible quarrels between the Homoiousians and the Homoousians . . . filled the world with riot and hatred).⁶ The Old Testament is filled with numerous stories involving slavery, intolerance, murder, and even genocide unlike the New Testament when compared.⁷

⁵ Id. p 39

⁶ Emmet, Kennedy. (2006). *Secularism and its Opponents from Augustine to Solzhenitsyn*. (PALGRAVE MACMILLAN 175 Fifth Avenue, New York, N.Y. 10010 and Houndmills, Basingstoke, Hampshire, England RG21

Both the Old and New Testament did not bring a pragmatic adherence to human beings' actions in respecting human rights taking into consideration the Commandments of God and the universal values. This not unique under Christianity but the same is true for other sects and beliefs as regards to bringing about behavioral changes of the believers pragmatically than the theoretical wise. And we are experiencing huge human rights violations in Syria, Iraqi, Israel and Palestinian, Ukraine and South Sudan despite the fact that religion advocates for respect of human dignity to love each other as God commands.

Nietzsche's Social Construction for Self-interest Calculation (Non-religious Argument)

Nietzsche clearly began his assertion by the concept of the death of God. This assertion is to mean God was once alive as the being of all beings yet later we killed him. He argued that the universal morality was a fallacious and laminated in order to keep balance between the strong, genius and the weak. Furthermore, he argued that religion is manmade and outmoded because individuals, the strong were prohibited and killed not to develop their own value, beliefs and thoughts for the sake of the weak by introducing fear as an instrument to control. He asserted that slave in Athens is far better off than any modern man.⁸

He contrasted with Perry, who called him bogeyman (fear inducing), that morality is a social construction where individuals the strong are able to create values independent of any extraneous values beyond human understanding, religion. For example equality is a construct of few to keep the strong enslaved to the weak according to Nietzsche. The noble man experiences itself as determining value; it does not need approval or judge over the values. What is harmful to me is harmful in itself.

He has also contrasted with idea of common good of Thomas Hobbes under the social contract theory by assuming that community has always little values and a mechanism to suppress the

6XS). P 147 available at <http://libgen.org/get?nametype=orig&md5=A928E9677D367EF95DD94FB07B11C243> (Visited on 29 November 2012)

⁷ Supra note at 4 pp 20-25

⁸ Id p35

strong in order to preserve the thoughtless and artless masses. Rights are therefore necessarily serving the interest of one group at the expense of another (the weak against the strong)

Generally, Nietzsche argues that morality is a social construction for self-interest calculations not universal as religious grounded origins of human rights.⁹ And hence, human rights are originated as a result of values created by society and these values are necessarily plural i.e. different in places and time.

Alan Gewirth on the Principle of Generic Consistency and Reason as Self-fulfillment (Non-religious Argument)

Gewirth expounded his argument on the basis of non-religious but universal assertion that human rights are found on the elements of human rationality using his mental facilities very coherently and logically in taking actions. His procedures on Principle of Generic Consistency (PGC) are eight in number but can be minimized into two by way of summation: voluntariness and purposiveness. Furthermore, voluntariness should be obtained not by way of compulsion whether direct or indirect one so that the action taker's free choice will not be affected by external factors.

By an action's being voluntary or free I mean that its performance is under the agent's control in that he unforcedly chooses to act as he does, knowing the relevant proximate circumstances of his action. By an action's being purposive or intentional I mean that the agent acts for some end or purpose that constitutes his reason for acting; this purpose may consist in the action itself or in something to be achieved by the action.¹⁰

Gewirth contrasted with Perry that the foundation of human rights should not be depended on unobservable human sacredness rather it should depend on observable feature upon which we can ground the supreme moral principle is distinctly human ability to plan and execute an action.

⁹ Nietzsche, Friedrich. (1966). *Beyond Good and Evil: Prelude to a Philosophy of the Future* in *Basic Writings*, 251 as cited in Kohen, Ari. (2007). In *Defense of Human Rights: A non-religious grounding in a pluralistic world*. (Routledge, 270 Madison Ave, New York, NY 10016), P32-35

¹⁰ Gewirth, Alan. (1981). *Reason and Morality*. (Chicago: University of Chicago Press, 1981), ix as cited in Kohen, Ari. (2007). In *Defense of Human Rights: A non-religious grounding in a pluralistic world*. (Routledge, 270 Madison Ave, New York, NY 10016), p45

Furthermore, Gewirth argues that other people will not interfere to one's well-being and freedom not because they have a certain contract but on one's prudential criteria, because such non-interference is necessary to his being a purposive agent.¹¹

However, Gewirth's argument lacks practicability and failure to appreciate the partiality of human nature which is a cause for human rights violations. Furthermore, Gewirth figured out his principles of PGC in a vacuum and purely in the academic world which is also theoretical and impracticable as Rorty has commented. Therefore, Gewirth's argument lacks reality and fails to consider extraneous circumstances into account in his appreciations of PGC.

Richard Rorty Sentimentality, Solidarity and Subjectivity for Self-creating (Non-religious Argument)

Rorty articulates that the outcome of nomenclature is mass violations of human rights. And morality should come from the bottom not from the heavenly God by way of developing sentiments towards one another. Actions should be taken after evaluating its consequence by inserting in the shoe of others who receives the action. Rorty identifies three possible reasons for the violations of human rights which are also the result of failure to develop sentiments towards one another:

- 1) The dichotomy of adult and children;
- 2) The dichotomy of human and animal; and
- 3) The dichotomy of female and male.¹²

The question of whether there is some feature or quality inherent in human beings from which our rights emanate is central to any attempt at understanding human rights claims. As Michael Perry notes:

The fundamental challenge to each and every human rights claim – in particular, to each and every claim about what ought not to be done to any human being or what ought to be done for every human being – is a demand for reasons.¹³

¹¹ Id p48

¹² Rorty, Richard. (1989). Human Rights, Rationality and Sentimentality. Available at http://pages.uoregon.edu/koopman/siap/readings/rorty_rationality_sentimentality.pdf (Visited on 02 December 2012), pp 168-169

¹³ Supra note at 4 p 109

The demand for reason symptomatic of a deep desire which is outmoded but firmly entrenched one should cease to work in the search for the foundations of human rights according to Richard Rorty. He further argues that the vocabulary of Enlightenment Rationalism, although it was essential in the beginning of liberal democracy, has become an impediment to the preservation and progress of democratic society.¹⁴

Rorty, as an American philosopher, articulates that the foundational idea for human rights is derived from **sympathy and solidarity** which are natural and universal characteristics of humanity. From this we can infer that Rorty espouses a kind of individualistic liberalism which favors universal principles of human rights as opposed to cultural relativism which considers value pluralism of human rights which becomes bone of contention among the Western and Non-western countries as regards to the applications of international covenants like the UDHR, ICCPR and ICESCR.

Furthermore, Rorty provides two most important items on his list that are guarantee of private self-creation and a general lessening of cruelty back from ancient times until these days. Rorty very carefully demands individuals to seek for and think about whether there exists, for them, a social good more important than avoiding cruelty. But Rorty does not provide why individuals refrain from taking force or cruelty in order to assure their interest than begging the question.

The social glue holding together the ideal liberal society . . . consists in little more than a consensus that the point of social organization is to let everybody have a chance at self-creation to the best of his or her *abilities*.¹⁵

The coexistence and separation of ironism and liberalism would be very difficult which equally applicable to public life and private life. Liberals are those who think that cruelty is the worst thing we do whereas ironist believed that humiliation or cruelty is inexorable and cannot be avoided pragmatically. The following is a noteworthy conclusion made by Rorty.

¹⁴ Rorty, Richard. (1989). *Contingency, Irony, and Solidarity*. (Cambridge: Cambridge University Press, 1989), 26 as cited in Kohen, Ari. (2007). *In Defense of Human Rights: A non-religious grounding in a pluralistic world*. (Routledge, 270 Madison Ave, New York, NY 10016), p110

¹⁵ *Id.* p 113

I conclude that what the ironist is being blamed for is not an inclination to humiliate but an inability to empower. There is no reason the ironist cannot be a liberal, but she cannot be a “progressive” and “dynamic” liberal in the sense in which liberal metaphysicians sometimes claim to be.¹⁶

However, when we trace our history, it reveals that the liberals were not in a position to develop a sort of sentiment and solidarity towards human creature but rather we have experienced untold sorrows and atrocities in the Second World War by Nazi Germans against Jewish where they exterminate under the Holocaust. Furthermore, there are infinite examples where no human sentiment has had existed in this world.

Generally, I can say that Rorty’s understanding on issues of origins of human rights, though eloquently explained, lacks pragmatism and there is a clear divorce between the theory of Rorty and the practice going on on the world even these days.

Ronald Dworkin’s Secular Conception of Sacredness

Dworkin argues firmly to Perry that human sacredness can be found outside the realms of religious concepts. Most people, who are not religious persons, acknowledge the intrinsic value of human life. The value of human sacredness can be found independent of the religious arena i.e. things may be by themselves sacred/inviolable values for example experience, knowledge, art and nature. Human inviolability should be an end by itself not a means to an end and should be given values irrespective of the existence of religion.

David Hume and many other philosophers insisted that objects or events can be valuable only when and because they serve someone’s or something’s interests. On this view, nothing is valuable unless someone wants it or unless it helps someone get what he does want.¹⁷

¹⁶ Id. p 117

¹⁷ Dworkin, Ronald. (1994). *Life’s Dominion: an Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Vintage Books, 1994), 195 as cited in Kohen, Ari. (2007). *In Defense of Human Rights: A non-religious grounding in a pluralistic world.* (Routledge, 270 Madison Ave, New York, NY 10016), p67

Dworkin argues that something might be held sacred when we attach a certain value to it, when we hold it in a very high esteem. This is challenged by Perry that secular sacredness is that intrinsic value is necessary but not sufficient condition to establish sacredness.

Conclusion

Note that revealing and discussing the foundations of human rights and raising the diversified arguments and understandings about origins of human rights in detail is a herculean task and impossible to cover all issues and arguments within this narrow version of paper. The paper is rather intended to provide an insight to the origin of human rights and related arguments about it and open the platforms of the discussion for further readings and possible arguments and understandings.

Promise and urge to countries of the world has been given about the violations of human rights in different eras after mass exterminations. As a result of the mass extermination of humanity in the First and Second World Wars, the international community agreed in the aftermath of the Second World War to codify human rights. And the protection, promotion and insurance for human rights were inculcated in different international, regional and national laws. These laws trace their legitimacy and authority to natural laws which in turn accepts the laws of God and morality as the foundation of human rights.

Despite these huge thrive, the violations of human rights continue to exist and expect further stringent mechanisms of protection to response to violations in Syria, Iraqi, the Middle East, South Sudan and Ukraine among others.

To summarize the philosophic foundation, though difficult, can be said that every philosopher lacks something which another comes up and there is a clearly failure to approach the concept holistically. Furthermore, every philosopher on such issue failed to see his or her articulation in the light of inclusiveness, persuasiveness and practicality so that the workability of the assertion can be valid and enduring. However, doing these might to be found a thorny task and humanely impossible as the concept is very wavering in time, space and culture.

References

Dworkin, Ronald. (1994). Life's Dominion: an Argument about Abortion, Euthanasia, and Individual Freedom. (New York: Vintage Books), 195

Emmet, Kennedy. (2006). Secularism and its Opponents from Augustine to Solzhenitsyn. (PALGRAVE MACMILLAN 175 Fifth Avenue, New York, N.Y. 10010 and Houndmills, Basingstoke, Hampshire, England RG21 6XS),.

Friedrich, A. Hayek. (1959). *The Constitution of Liberty: The Origins of the Rule of Law*
Chapter Eleven. (A Phoenix Book University of Chicago Press)

George, W. Rainbolt. (2006). *The Concept of Rights.* (Springer P.O. Box 17,3300 AA
Dordrecht, The Netherlands)

Gewirth, Alan. (1981). *Reason and Morality.* (Chicago: University of Chicago Press, 1981), ix

Kohen, Ari. (2007). *In Defense of Human Rights: A non-religious grounding in a pluralistic
world.* (Routledge, 270 Madison Ave, New York, NY 10016)

Nietzsche, Friedrich. (1966). *Beyond Good and Evil: Prelude to a Philosophy of the Future in
Basic Writings*

Perry, Michael J. (1998). *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University
Press), 13,

Rawls, John. (1999). *A Theory of Justice. Revised Edition* (Cambridge: The Belknap Press of
Harvard University Press)

Rorty, Richard. (1989). *Contingency, Irony, and Solidarity.* (Cambridge: Cambridge University
Press), 26