

Jonathan Gast, 2006

An Explicative Essay on Rights

PSC 118w

Prof. Christopher Deering

Today the concept of ‘rights’—specifically how they relate to individuals—is based on a dynamic philosophical and legal discourse dating back to the Enlightenment and to Ancient Greece. However, the concept of rights has not remained static, because throughout history it was founded on changing premises of human nature. By tracing the evolution of these premises, one can distinguish between ancient and modern understandings of rights.

Aristotle illustrates man’s rights through human nature’s relation to the city (polis), and as an ancient philosopher he examined human nature by conceiving its perfection, embodied in virtue.¹ Aristotle concluded that man by nature is a political being, owing his existence to the city which he is a part of.² Thus it follows that “man’s primary relation to the city...is one of obligation,” and is in principle subordinate to that city.³ In Sparta for example, the individual was entirely subordinate to the city.⁴ Aristotle suggests that man achieves virtue as a political being through philosophical aspiration to matters like education and the arts which contribute to the city’s well-being.⁵ In contrast to Sparta’s total subordination of man to the city, Athens developed a sense of individual rights for private life, explained by Thucydides: “everyone is equal before the law...We are free and tolerant in our private lives; but in public affairs we keep to the law. This is because it commands our deep respect.”⁶ This respect for law agrees with Aristotle, because man is still subservient to the city in public life. In this way, rights were achieved in private life through service in public life. Athens was subsequently defeated by Sparta, and this brief flicker of individual rights was extinguished. Emerging from the dark ages, philosophers began to challenge the premise that human nature is political.⁷

In the 1500’s Machiavelli first challenged the premise that human nature was political by observing human nature in its worst state instead of its perfect state, because “that is when all...the nonessential things, are stripped away.”⁸ Thus, obedience cannot be derived from

human nature's relation to the city. Instead, Machiavelli suggests that man lives in a city/society for individual security and protection.⁹ In the 1600's Thomas Hobbes developed his theory of political society based on these notions.¹⁰ Since rights cannot spring from a political human nature, they must be derived from the hostile state of human nature where "it is manifest that...men [who] live without a common power to keep them all in awe...are in that condition which is called war".¹¹ This negative view of human nature illustrates that man is concerned with his own well-being and that issues of right and wrong are not discernable. To escape this hostility men make a hypothetical contract, agreeing to vest power into a sovereign who uses this power to enforce obligations. From obligations spring liberty and rights, allowing one to "nourish [oneself] and live contentedly".¹²

Jeremy Bentham describes 'rights' as part of a 'universal expository jurisprudence' which gives substance to the legal rhetoric of civil society.¹³ By defining how a right comes into being, Bentham relies on the Hobbesian assumption that man in his aggressive state of nature has the right to do or not to do anything.¹⁴ Due to the absence of legal and moral obligations, these are termed 'liberty-rights', because man is free to do as he pleases.¹⁵ In contrast, obligatory rights are those which result from an obligation to do or not to do something. In civil society liberty-rights must be secured through obligatory rights.¹⁶ Thus the right to take a walk without being assaulted derives from its correlation, the obligation not to assault someone else. Civil and criminal law create liberty-rights for others by enforcing obligatory rights. This creates a perimeter of obligatory rights under which one can, to the extent of the boundary, enjoy all other liberty-rights.¹⁷

Jean-Jacques Rousseau, who admired the ancient republic and its dedication to virtue, takes the idea of a sovereign and the contract and combines them with political virtue.¹⁸ For

Rousseau, men in their natural state can give up their varying strengths and weaknesses, and join in civil society, which gives back a societal covenant of rights based on the 'general will'.¹⁹ This is rooted in the notion that humans are empowered by civil society to attain civic virtue.²⁰ In terms of property rights, when man leaves his natural state and joins civil society, he forgoes liberty-rights "to [*possess*] anything that tempts him," and through the general will he gains the "legal right of [*owning*] property".²¹ Until man enters civil society, his possessions are acquired and kept by the "right of the first occupant".²² In civil society, a possession becomes the property of a recognized citizen. Thus, civil society solidifies man's claim to his possessions.²³ Although this understanding of human nature is dissimilar to Hobbes' view, the view of rights agrees with Bentham's, because the perimeter of obligatory rights is much the same as the 'general will'. And although Rousseau seems to idolize civic/political virtue, his focus on individual benefit makes his theory of human nature distinctly part of the modern discourse.

Extending the individual-centered focus further, Adam Smith contends that man is moralistically aware of individual rights and abides by them, even without a sovereign or a general will. It is human nature "to feel much for others and little for ourselves...to restrain our selfish, and to indulge our benevolent affections".²⁴ This positive view of human nature is rooted in man's natural sympathy. Rights are thus accorded by inherent moral perceptions. This rejects both the Machiavellian assumption of a hostile human nature and Aristotle's political man.

At the 'ancient' extreme, individual rights cannot be separated from society, because man is political by nature. At the 'modern' extreme, man already perceives rights without society. Thus as human nature is perceived to become more individualistic, the source of rights is seen to lie more in the hands of the individual. Yet just as Athens secured rights in private life through service in public life, liberal-rights are secured in modern society through obligatory rights.

-
- ¹ John W. Danford, Roots of Freedom. (Wilmington: ISI Books, 2000) 3.
- ² Danford 2.
- ³ Danford 5.
- ⁴ Danford 6.
- ⁵ Danford 7.
- ⁶ Thucydides, History of the Peloponnesian War, trs. Rex Warner (London: Penguin, 1954) 145.
- ⁷ Danford 52.
- ⁸ Danford 53.
- ⁹ Danford 55.
- ¹⁰ Danford 76
- ¹¹ Thomas Hobbes, Leviathan. 1668. (Cambridge: Hackett Publishing Company, 1994) 76.
- ¹² Hobbes 109.
- ¹³ H.L.A. Hart, "Bentham on Legal Rights." Rights and Their Foundations. Ed. Jules L. Coleman. (New York: Garland Publishing, 1994) 3.
- ¹⁴ Hart 5.
- ¹⁵ Hart 4.
- ¹⁶ Hart 6.
- ¹⁷ Hart 10.
- ¹⁸ Danford 111.
- ¹⁹ Jean-Jacque Rousseau, The Social Contract. 1762. (London: Penguin Books, 1968) 41, 68.
- ²⁰ Rousseau 41.
- ²¹ Rousseau 65.
- ²² Rousseau 65.
- ²³ Rousseau 64
- ²⁴ Adam Smith, The Theory of Moral Sentiments. 1781. (Indianapolis: Liberty Fund, 1982) 25.