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Human Rights and Sovereignty

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Abstract

By exploring a genealogy of the ideas of human rights and sovereignty, I will attempt to shed light on the problems of nation-state, its violence and its power.

Keywords: human rights, sovereignty, nation-state, power

要旨

人権と主権の観念の系譜を探究することで、国民国家とその暴力、その権力の問題を明らかにする。

キーワード: 人権、主権、国民国家、権力

The second half of the twentieth century is described as the Age of Rights. However, we should recognize the description reflects not only the fact that human rights have successfully flourished through the latter part of the twentieth century, but also the fact that human rights were terribly neglected to the extent that the Rights of Man became completely ineffective during the first half of the twentieth century. Considering this historical fact, we can see the twentieth century was an “age of extremes”, as Eric Hobsbawm called it. I will explore the problematic theme of human rights and sovereignty, or the relation of human rights to sovereignty and sovereignty to human rights, in-between the two extremes of care and neglect of human rights. The nature of sovereign power has undergone a very profound transformation since the Rights of Man was declared and, at the same time, regarded as the basis for state sovereignty in the eighteenth century. As to this transformation, Michel Foucault puts “the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death” (Foucault 1990: 138). He argues the transformation of sovereign power makes massacres possible in twentieth century wars. In discussion of human rights and

sovereignty, we should not disregard his suggestion, for, I believe it holds the key to understanding the enigma of sovereignty.

In the present day, human rights are expressed as “individual sovereignty”, for many scholars consider that the concept of human rights limits state sovereignty. If that is the case, however, what is, or what should be, individual sovereignty or present-day human rights? What is, or what should be, the relation between state sovereignty and individual sovereignty? While asking these questions regarding the two perspectives of sovereignty, we should be cautious in how we refer to the theories of social contract, because social contract theories do nothing but legitimize the relation between individual sovereignty and state sovereignty and tend not to make it problematic. So, temporarily, we need to analyze human rights and sovereignty separately.

The perplexities of human rights

We use the same word of ‘human rights’ both when we talk about human rights as the basis of a sovereign state, and when we engage in humanitarian assistance or dispense charity. The former concept of human rights is required in the process of forming a constitutional government. On the other hand, the latter must be distributed to those who are struggling to subsist, facing famine, or are in danger of death. The supposed recipient of human rights in the former context represents right holders in a given decent society or state. Whereas in the latter case, the supposed recipient presents life at its most basic. Actually we think life as such has a dignity which we cannot harm because of its sacredness. However, are the two usages of human rights valid?

Putting aside the attempts to determine philosophically the foundation of human rights, they are, in terms of pragmatism, ostensibly self-evident, for we understand that individuals are granted human rights simply because they are of the human species. However, just taking a look around the world, human rights generally come with an intrinsic un-obviousness. Refugee or asylum seekers, people facing famine and victims of indiscriminate bombing, may well raise skepticism about the effective enforcement of their human rights. The two usages of human rights as mentioned above exemplify the puzzle of human rights in the real world. Hannah Arendt had already pointed out

this problem as being “the perplexities of the rights of man”, which has been widely and repeatedly cited:

The Rights of Man, after all, have been defined as “inalienable” because they were supposed to be independent of all governments; but it turned out, that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them (Arendt 1976: 291-292).

To understand the paradox, we shall first discuss the self-evidence or truism of human rights then we shall explore where the “perplexities” originate.

What is human dignity?

The truism of human rights could derive from the obviousness of the word “human dignity” which implies a mixed ethic, legal and political sense. “Human” in human dignity signifies that human dignity is based on an ability which animals are not granted. Namely it is language. The following passages from *The Politics* of Aristotle are well known.

...man alone of the animal possesses speech. The mere voice, it is true, can indicate pain and pleasure, and therefore is possessed by the other animals, as well (for their nature has been developed so far as to have sensations of what is painful and pleasant and to signify those sensations to one another), but speech is designed to indicate the advantageous and the harmful, and therefore also the right and the wrong; for it is the special property of man in distinction from the other animals that he alone has perception of good and bad and right and wrong and the other moral qualities, and it is partnership in these things that makes a household and a city-state (Aristotle 1932: 11).

Language ability gives human beings, as against other living animals, the additional capacity for a political existence. This ability causes a proper and unique desire in human beings and the society in which they live. Primarily because of language, human beings have the ability to understand and recognize precepts between people and within societies or communities. Those precepts are required for people to live together in accordance with order and peace. If people develop the ability adequately and exercise it effectively, people can guide their own behavior by themselves properly. The desire inherent in human beings is that man wants others to recognize his ability to guide and

adjust himself to get along well with others in a community. The desire enables man to create and build mutual trust within a community, which removes mutual distrust and makes the community stable. Human dignity which is qualified as some inviolable power arises when and where people mutually recognize the above ability, and people's respect for dignity enables a society or a community to reproduce itself. The circulation of the desire for recognition, creation of mutual trust and reproduction of community might well endow human dignity with a sacred power.

I do not know of any great human civilization or city-state that does not include respect for dignity and accountability for the individuals it rules. So, the truism of human dignity is derived from the fact that human beings are born among people and grow up among people which conditions human beings to adapt to the environment.

However, this still does not suffice to understand the seeming truism of human dignity in its modern meaning. So we need to look at another ability of human beings: reason. By virtue of reason, people can understand the Laws of Nature which tell us what are the Natural Rights endowed to man by nature. Now let me move forward to the Age of Enlightenment. It seems appropriate to refer to Locke's *Two Treatises of Government*.

Human dignity in the age of enlightenment

Locke used his concept of state of nature “[t]o understand Political Power right, and derive it from its Original” (Locke 1988: 269). Following Locke, this state is also a state where everyone is equal one among another without subordination or subjection. Moreover this should be a “State of Liberty” but it is not a “State of license”.

[T]hough Man in that State has an uncontrollable Liberty, to dispose of his Person or Possessions, yet he has not Liberty to destroy himself, or so much as any Creature in his Possession, but where some nobler use, than its bare Preservation calls for it. The State of Nature has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions (ibid.: 270-271).

In order to sustain stable life, health, liberty and equality within a community and to rule the community, by preventing infringement on natural law and punishing those who infringe on the rights of man, people form political bodies or civil societies and have a

government with political power. Led by reason, these processes of social contract develop. Reason is also considered to be embedded within each individual. So we regard reason as a sacred gift which we understand endows man with dignity.

We can confirm, in the declarations of the eighteenth-century, Locke's conception of rights or the Enlightenment notion of human rights, which leads to the present-day notion of human dignity: "That all men are by nature equally free and independent and have certain inherent rights" (Virginia Declaration of Rights); "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" (The Declaration of Independence); "Men are born and remain free and equal in rights" (Declaration of the Rights of Man and of the Citizen).

Thus, in the Age of Enlightenment, human dignity came to be understood as given by "nature" itself. However, since then, some social, political roles or activities, which were crucial to human dignity in earlier times, were to play a less important part in the notion of human dignity. It seems that after the eighteenth century declarations, while human rights came to be established in the constitutions of modern states, the concept of political existence of men became diluted. For, in modern nation states which are granted authority by being based on human rights, subjection of an individual to sovereign power is valid with the sole purpose of effectively protecting his life. Thus we can see there was some change in the notion of human dignity in the course of the eighteenth century, when the concept of Natural Rights turned into the present-day concept of human rights. Now, human dignity means respect for mere life as such and dignity is an indispensable part of human rights. This picture of human rights, I assume, could explain the truism.

Now, human rights are given the name of individual sovereignty. This notion of sovereignty seems very different from the notion of state sovereignty though, the two concepts of sovereignty have mutual, intimate interrelation in the theories which justify the authority of nation state within a given state and international humanitarian intervention. So the research I intend to undertake is to analyze the concept of sovereignty.

The themes for furthering my research are as follows:

1. What is the notion of ancient sovereignty?
2. What is the notion of state sovereignty?
3. What is the notion of individual sovereignty?
4. The genealogy of the above three notions.
5. To understand the relation of the above three notions genealogically.

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