



THE CONCEPT OF RIGHTS – TO BE OR NOT TO BE?

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ABSTRACT

This paper discusses the concept of *Rights* in broad details by giving various definitions of it in a way that it can clearly be understood by everyone. Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture, as the history of social conflicts can be found in the history of each right and its development. Rights, no doubt, structure the form of Governments, the contents of laws and shape the morality as it is currently perceived. Rights primarily belong to individuals. A brief history of the concept of *Rights*, its growth and adoption by Nations is also discussed in this Paper, which equally elaborates on the types of Rights, Functions and different approaches to the Justification of rights. It must be noted that certain rights are applicable to all individuals on earth, and such rights should never be taken away. A few of these are as follows: the right to life, the right to own separate property, the right to choose, right to work and earn a living, the right to vote, the right to equal treatment before the law, etc. However, if all *Rights* start and end with the few examples just stated, I may say that there should be nothing like the concept of *rights*, since everybody is naturally endowed with those rights, but the whole work does not end with these few examples. Everybody also has to put in some personal efforts to ensure that those naturally endowed rights are indeed enjoyed. This brings us to the point where everybody is rewarded according to his/her efforts. What you are paid determines to a large extent your level of sustenance and acquisition of property. Even the fact that people are endowed with different talents is another justification for the existence of the concept of Rights, and I dare ask – why should *Rights* not exist?

Keywords: Concept of Rights, History of Rights, Types of Rights, Function of rights, Justification of Rights

INTRODUCTION

Definition of Rights

There is considerable disagreement about what is precisely meant by the term *Rights*. It has been used by different groups and thinkers for different purposes, with different and sometimes opposing definitions, and the precise definition of this principle beyond having something to do with normative rules of some sort or another is controversial.

A *Right* is said to be an entitlement or justified claim to a certain kind of positive and (or) *negative*¹ treatment from others, to assistance from others or non-interference from others². Rights are legal, social or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some Legal System, Social Convention or Ethical Theory.³ Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture, and the history of social conflicts can be found in the history of each Right

¹ I wonder the essence of the term *negative*. Can one fight for anything negative?. I may ask.

² Jan Garrett: *The concept of Rights* (2004)- www.wku.edu/jan.garrett

³ Wikipedia, *the free encyclopedia*

and its development. *Right* structure the form of Governments, the content of laws and shape the morality as it is currently perceived⁴. A Right can also be defined as a power, privilege or immunity guaranteed under a Constitution, Statute or Case law or claimed as a result of long usage. In moral vocabulary, respect for rights is seen as a matter of justice. Rights can be asserted, demanded or stood upon. The obligations they impose are expected to be performed and their non-performance occasion feelings of indignation, resentment and disappointment⁵.

A Right is something to which every individual in the community is morally entitled, and for which that community is entitled to disregard or forcibly remove anything that stands in the way of even a single individual getting it. Rights belong to individuals, and no Organisation has any rights not directly derived from those of its members as individuals⁶; and just as an individual's rights cannot extend to where they will trespass on another individual's rights, the rights of any Organisation whatever must yield to those of a single individual, whether inside or outside the Organisation. Therefore, Rights primarily belong to individuals⁷. When an individual's rights are violated by a system of Government, or when the consent of the governed ceases to exist or cannot be freely discussed, the Government forfeits its rights to existence, and the whole question of authority reverts to the people to abolish the existing authority by any means available and set up whatever new form of Organisation will actually guarantee the rights of everyone and hold the consent of the governed⁸. According to John Boyle O'Reilly, *the health of a Nation is periled if one man is oppressed*.

*Brian Orend*⁹ on basis of Rights said that five vital needs are common to all human beings, and if they were not met at basic level, we cannot function as rational beings. He listed these vital needs as *security, subsistence, freedom, equality, and recognition*.

A BRIEF HISTORY OF RIGHTS¹⁰ – The Cyrus Cylinder 539 B.C

The Decrees Cyrus made on human rights was inscribed in the Akkadian Language on a baked-clay cylinder. Cyrus the Great, the first King of Ancient Persia freed slaves of Babylon in 539 B.C. In 539 B.C, his Armies conquered the city of Babylon, and it was his actions that marked a major advance for man. He freed the slaves and declared that all people had the right to choose their own religion and established racial equality. These and other decrees were recorded on a baked clay cylinder in Akkadian Language with cuneiform script. Known today as Cyrus Cylinder, this ancient Record has now been recognized as the World's first Charter on Human Rights. It is translated into all the six official languages of the United Nations, and its Provisions parallel the first four Articles of the Universal Declaration of Human Rights.

From Babylon, the idea of Human Rights quickly spread to India, Greece and eventually Rome. There, the concept of Natural Law arose in observation of the fact that people tend to follow certain unwritten laws in the course of life, and Roman law was based on rational ideas derived from the nature of things. Documents asserting Individual Rights such as the Magna Carta (1215- *for Great Britain and widely viewed as the most important document in modern democracy for being a crucial turning point in the struggle to establish freedom*), The Petition of Right (1628), The US Constitution (1787), The French Declaration of the Rights of Man and of the Citizen (1789), and The US Bill of Rights (1791) are the written precursors to many of today's Human Rights Documents which also include the following:

⁴ *Stanford Encyclopedia of Philosophy*, Stanford University, July 9, 2007. Rights dominate most modern understandings of what actions are proper and which Institutions are just. To accept a set of rights is to approve a distribution of freedom and authority, and so, to endorse a certain view of what may, must and must not be done.

⁵ *Grace Adikema-Ajaegbo: The Rights of Women in Nigeria –www.thelawyerschronicle.com*

⁶ Of course, some Administrative Agencies are expressly created by the Constitution in Nigeria to perform some specific functions, and exist at the Will of the Federal Government. This abounds in many countries too.

⁷ *W.J Sidis: The concept of Rights – www.sidis.net*. He spoke on the American conception of *Rights*. *He says that anyone showing the slightest support towards a Government which has shown any tendency to suspend the peoples' rights in its own defence is a Traitor to the liberties of the people, and without any qualification or exception being possible*. I very much agree with him on this statement.

⁸ *W.J Sidis: The Concept of Rights* supra

⁹ A Canadian Philosopher, in his book *Human Rights: Concept and Context (2002) Broadview Press (www.broadviewpress.com)*.

¹⁰ www.humanrights.com/what are human rights?

- i. United States Declaration of Independence (1776)
- ii. The Bill of Rights of England (1689)
- iii. The Universal Declaration of Human Rights (1948)
- iv. The European Convention on Human Rights (1950)
- v. The International Covenant on Civil & Political Rights (1966) – a follow-up on the Universal Declaration of Human Rights
- vi. The International Covenant on Economic, Social & Cultural Rights (1966)
- vii. The Canadian Charter on Rights and Freedom (1982)
- viii. The Charter of Fundamental Rights of the European Union (2000)¹¹

TYPES OF RIGHTS

One way to get an idea of the multiple understandings and senses of the term *Rights* is to consider some of the different ways in which it is used. Many diverse things are claimed as Rights such as: a right to life, a right to choose, a right to vote, to work, to strike, to dissolve Parliament, to operate a forklift, to asylum, to equal treatment before the law, to sentence an offender to death, to a distinct genetic identity, to feel proud of what one has done, a right to exist, etc. There are likewise possible ways to categorize rights such as Natural Rights *versus* Legal Rights, Claim Rights *versus* Liberty Rights, Positive Rights *versus* Negative Rights and Individual Rights *versus* Group Rights. Who is alleged to have rights? They are children, workers, States, Groups, peoples, etc. We may briefly define and differentiate between these classes of rights¹² as follows:

(a) Natural & Legal Rights

Natural Rights are rights which are *natural*, inalienable, not man-made, derived from human nature. They are universal, that is, they apply to all people and do not derive from the laws of any specific society. They are inherent in every individual and cannot be taken away. For example, human beings have a natural right to life which is an inalienable right. We also have a right to speech, right to our private property and right not to be censored.

Legal Rights are based on a society's customs, laws, statutes or actions by legislatures. An example is the right to vote of citizens. Citizenship itself is often considered as the right to have rights. Legal rights are sometimes called civil rights or statutory rights and are culturally and politically relative since they depend on a specific societal context to have meaning.

(b) Claim Rights & Liberty Rights¹³

A **Claim Right** is a right which entails that another person has a duty to the right-holder. Every claim - right means that some other duty-bearer must do some duty for the Claim to be satisfied. This duty can be to act or refrain from acting. For example, many jurisdictions recognise broad claim rights to things like life, liberty and property. These rights impose an obligation upon others not to assault or restrain a person, or use their property without the claim-holder's permission.

A **liberty Right** or *privilege* is simply a freedom or permission for the right-holder to do something, and there are *no obligations* on other parties to do or not to do anything. For example, if a person has a legal liberty right to free speech, that merely means that it is not legally forbidden for them to speak freely, it does not mean that anyone has to help enable their speech or to listen to their speech.

Liberty rights and Claim Rights are the inverse of one another- a person has a liberty right permitting him to do something only if there is no other person who has a Claim Right forbidding him from so doing.

¹¹ Wikipedia, the free encyclopedia - *Rights*

¹² Wikipedia, the free encyclopedia

¹³ Article on *Natural/Liberty Rights versus Legal/Claim Rights*- www.hubpages.com.

(c) **Positive & Negative Rights**

Positive Rights are permission to do things, or entitlements to be done unto, e.g the right to welfare.

Negative Rights are permission not to do things, or entitlements to be left alone. Often, the distinction is invoked by Libertarians who think of a negative right as an entitlement to non-interference such as a right against being assaulted¹⁴.

(d) **Individual Rights & Group Rights**

According to *Ayn Rand*, rights are possessed by individuals in the sense that they are permissions and entitlements to do things which other persons, or which Governments or Authorities cannot infringe. Only individuals have rights according to her Philosophy of *Objectivis*¹⁵.

Individual Rights are rights held by individual people regardless of their group membership or lack thereof.

Group Rights – one may ask *do groups have rights?* Some argue that when soldiers bond in combat, the group becomes like an organism in itself and has rights which trump the rights of any individual soldier¹⁶.

Group rights have been argued to exist when a group is seen as more than a mere composite or assembly of separate individuals, but an entity in its own right. In other words, a group can be seen as a corporate body which has a distinct Will and Power of action, and can be thought of as having *rights*. For example, a platoon of soldiers in combat can be thought of as a distinct group, and therefore, the group can be conceived as having a *right* which is superior to that of any individual member. However, there is another way of defining group rights, such as where people who are members of a group can be thought of as specific having individual rights because of their membership in a group. An example is a Labour Union where individual rights are expanded because of their membership in the union, and the fact that they have rights to specific working conditions or wages. An example in which individual and group rights clash is where there is conflict between Unions and their members because individuals may opt for a higher wage, but are prevented from making further requests by the Union executives in a so-called closed shop security agreement.

Other distinctions between rights are drawn in comparison with **Rights & Politics**-here we have distinctions between civil & political rights in contrast to economic, social and cultural rights, **Rights & Philosophy**, etc.

Functions of Rights

The question of the function of rights is the question of what rights do for those who hold them. There are two main theories of the function of rights namely the Will Theory and the Interest Theory.

- a) The **Will Theorists** maintain that a right makes the right-holder *a small scale sovereign*. Specifically, a Will Theorist asserts that the function of a right is to give its holder a control over another's duty¹⁷.
- b) The **Interest Theorists** disagree that the function of a right is to further the right-holder's interests. An owner has a right, according to the Interest Theorist, not because owners have choices, but because the ownership makes owners better off. A Promisee has a right because promises have some interest in the performance of the promise, or (alternatively), some interest in being able to form voluntary bonds with others. Your rights, the Interest Theorist says are the incidents you have that are good for you.

¹⁴ *Stanford Encyclopedia of Philosophy*, Stanford University, 2007. A distinction between negative and positive rights is popular among some normative theorists, especially those bent towards Libertarianism. The holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to provision of some Good or Service.

¹⁵ *The Virtue of Selfishness: A new Concept of Egoism*. (1964). To her, individual rights are not subject to a public vote; a majority has no right to vote away the rights of a minority' the political function of rights is precisely to protect minorities from oppression by majorities (and the smallest minority on earth is the individual).

¹⁶ *Wikipedia, the free encyclopedia*.

¹⁷Plato.stanford.edu

The contest between Will-based and Interest-based theories of the function of rights has been waged for hundreds of years. Influential Will Theorists include *Kant, Savigny, Kelsen, Hart, Wellman* and *Steiner*. Important Interest Theorists include *Bentham, Ihering, Austin, Lyons, MacCormick, Raz and Kramer*.

APPROACHES TO THE JUSTIFICATION OF RIGHTS¹⁸

Under this sub-topic, we have the Status-based Rights, Instrumental rights as well as Contractual/Justificatory Rights.

i Status Theory – this belongs to the natural rights category. All natural rights theories fix upon features that humans have by their nature, that which make respect for certain rights appropriate. Natural Rights Theory reached its high point in the modern era in the work of John Locke who argued that men have rights to life, liberty and estate in a pre-political state of nature, and that these natural rights put limits on the legitimate authority of the State. His influence can be seen in the revolutionary American and French Political Documents of the 18th century, especially in Jefferson's Declaration of Independence of 1776 (US) which says '*we hold these truths to be self-evident, that all men are created equal and endowed by their Creator with certain inalienable rights, and among these are life, liberty and the pursuit of happiness*'.

ii Instrumental Theory – describes *rights* as instruments for achieving an optimal distribution of advantages. However, Instrumental Theorists differ over how they define what counts as an optimal distribution (maximization, equality, etc). They also differ on how they measure individual advantage. Instrumental Theorists work with overall evaluations of how well off individuals would be, were certain rights ascribed, and for this, they should explain how distinct categories of interests (such as health, income, opportunities for self-expression, social recognition) trade off against one another. They should also explain why they believe that these interests are similar enough across persons to the extent that it makes sense to use the same scales of measurement for different persons¹⁹. Both the Status and Instrumental Theories of Rights have held a perennial attraction²⁰. As a result of this, a third approach that would combine what is plausible in each has been discovered²¹ and is known as *Contractual/Justificatory Rights*.

iii Contractual /Justificatory Rights Theory – here, rights are characterised neither as naturally fitting for independent beings, nor as tools to promote the best state of affairs. Rather, rights define principles that would be chosen by properly situated and motivated agents agreeing to the basic terms of their relations. The fact that these principles would be agreed to under the specified conditions is their justification.

The rights that define fundamental principles within these are phrased in terms of what the theories agents have strong reason to want. So, for example, Rawls states that the role of a citizen's right of personal property '*is to allow a sufficient material basis for a sense of personal independence and self respect, both of which are essential for the development and exercise of the two moral powers*'²². Scanlon says that reasonable individuals '*have reason to insist ... on basic rights which give them important forms of protection and control over their own lives*'²³.

¹⁸Plato.stanford.edu

¹⁹Griffin, J. : *Well-Being – Its Meaning, Measurement & Moral Importance* (1989) Oxford University Press

²⁰Plato.stanford.edu

²¹Plato.stanford.edu

²²Rawls (1993 @298)

²³Scanlon : *The Difficulty of Tolerance* (2003) Cambridge University Press @p.4

CONCLUSION

Some Philosophers have criticized *Rights* as ontologically dubious entities²⁴. They arrived at this conclusion by first attacking the substance of the doctrines that give *rights* a central place. Those Critiques allege that the content of such doctrines is in one way or the other malformed or unjustified²⁵.

An example is the criticism that natural rights doctrines are so much of flat assertions, and that utilitarian rights tend to be implausibly weak. Although *Jeremy Bentham*, the Utilitarian Philosopher is in favour of the extension of individual rights, he opposed the idea of natural law and natural rights, calling them *nonsense upon stilts*²⁶.

With reference to Classification of Rights, one can also question the ability of rights to bring justice to all, because of the fact that if we really take Group rights as superior to individual rights, it means that leadership of the Group can make arbitrary laws or take fraudulent decisions which may favour them alone to the detriment of the Group of people that elected them, and unfortunately in most cases, the Group decision stands²⁷. Also, using the concept *fundamental* rights to me may not be necessary, as every right of a person should be deemed fundamental, so long as nobody should encroach on it. Putting it succinctly, anything that belongs to another is fundamental, though right to life is the most important of all for the fact that one has to be alive to fight for other rights.

Therefore, I am of the humble opinion that there should be nothing like *negative* rights. Using the term *negative*, is not useful because anything known as *rights* should be something that anybody should be happy and willing to fight for if such are denied him/her, believing that there are advantages to be derived from it. Nobody is expected to fight for anything negative or detrimental, and no reasonable person would ever consciously fight for anything of a negative effect or impact. Therefore, the term *negative* is being wrongly used to describe *Rights* as a concept²⁸. Otherwise, why do people complain or go to the Law Courts to seek redress or an enforcement of their Rights, if those rights are not meant to be advantageous and of positive effect in any way to them? Lastly, whatever be the case, the *Rights concept*, in my view remains a welcome development as everyone on earth should be rewarded according to his or her own efforts.

**** The Author, *Barrister (Miss) Chigozie Ifeoma Nwagbara, LL.M* is also a Solicitor & Advocate of the Supreme Court of Nigeria²⁹.**

²⁴ *Wikipedia, the free encyclopedia*. That is definitely correct in my view as some people from different parts of the World commit fraud in the name of Rights.

²⁵ *Plato.stanford.edu*. I do not agree with their assertion.

²⁶ *Wikipedia, the free encyclopedia*. *Natural Rights and Natural law can never be done away with, if we must be sincere to ourselves. They forever exist because they are inalienable rights given to us as human beings by God*

²⁷ This has been responsible for most cases of corruption all over the World because Management Members of many big Organizations and Parastatals/Establishments are always in the habit of cooking up Books of Record, thereby committing massive fraud which kills those workplaces and in extreme cases, make them even shut down businesses completely. Cabinet Members of some Governments are also not left out of this corruption mess. In this category, many elected politicians all over the World are all guilty of committing fraud, all in the name of representing the electorate!. This is unfortunately a result of the concept of Group Rights which emanates from group representation. Even Political Parties' leadership do impose some members as candidates for political offices, even when they may not be the most sincere or academically qualified for the post. This happens in workplaces too. Whatever be the case, Groups made up of people have to exist to represent others or there cannot be any sane society without a Group of people handling certain responsibilities, whether at Federal, Regional/States or at the Local Government levels. Even Private Organisations have some people at the helm of affairs to keep businesses going.

²⁸ *In my candid opinion*.

²⁹ *Ph.D Law (In view), Bayero University, Kano*.