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Human Rights: As the Origin of Other Rights

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Abstract

From positive law's perspective, it is difficult to make clear the relationship between human rights and other rights. Nonetheless, from the natural law's perspective, it would be much easier to find the bloodline between them. This paper applies the doctrinal methodology and deductive reasoning to examine that the human right is the origin of all the other rights. There are four statements in the deduction. The first is that all human pursues happiness. The second is that human rights are conferred by nature as the precondition to realise human happiness. The third is that some parts of human rights are conferred to states through social contract to better pursue the human happiness. The final statement is that all the other rights are either the expression of human rights or the tool rights created by legislative organ based on the constitution to achieve human happiness. In the light of these statements, a conclusion that all the other rights originated from human rights, can be drawn.

Keywords

Natural law; Eudaimonism; Human rights; Social contract; Origin of rights

Introduction

At the ancient time, before the emergence of the society and states, there was nothing but only humans, human individuals and human groups. With the development of the human society, theories emerged, and positive laws were adopted and implemented. Different rights were actively debated and recognised by different societies during different eras. However, regardless of how the positive law changes, one thing remains unchangeable, that the development of the theories and practices of rights are done by the humans.

Though the human is the reason of the development, development also requires time. As a result, the concept of human rights is relatively new compared with the human history (Buergenthal, 2007). However, deriving from the inherent human nature ("International Covenant on Civil and Political Rights," 1966; "International Covenant on Economic, Social and Cultural Rights," 1966; "Universal Declaration of Human Rights," 1948), human rights exist since the emergence of the human being, irrespective of whether or not being recognised by positive laws (Schachter, 1983; Waldron, 2013). Nobody should claim that the innocent human beings deserve discrimination and death (Alford, 2010) even when the positive law says so (Nazi Germany, 1942; Mommsen, 1983; "Nuremberg Trial," 1946).

Since the human rights are conferred by the human's inherent nature, the human rights and the humanity emerge at the same time. While other rights emerge during the development of the human society, their emergence must be later than the emergence of the human rights. Thus, it is reasonable to assume that the human right is the origin of all the other rights. Though sometimes the forms of other rights do not look exactly the same as the origin, the origin decides their shapes. In other words, one right may have a totally different external form from the form of human rights, it should nevertheless always pursue and only pursue what the human right pursues. The bases and justifications of the human rights decide the contents of the human rights, thereby the contents of other rights.

The hypothesis that the human right is the origin of other rights, is deduced from four statements. The first statement is that all human pursues happiness. To understand the first statement, it is necessary to explain the definition of happiness. The second statement is that the human rights are conferred by nature as the precondition to realise human happiness. As the preconditions of the achievement of the happiness, the definition of happiness helps with the identification of the contents of the human rights. The third statement is that some parts of the human rights are conferred to states through social contract. The contents of the human rights decide that people can conclude their own social contracts. The fourth statement is that all the other rights are either the expression of human rights or the tool rights created by legislative organ based on the constitution to achieve human happiness. All the rights created by the normal laws originate from the constitution, thereby the human rights. To examine the hypothesis, the paper in chapter II examines the former two

statements, then in chapter III examines the latter two statements. Chapter IV concludes.

The Contents of Human Rights

In the Light of Natural Law

At least as far back as the ancient Greeks, humans have already been aware of natural law and their natural rights through the eternal law or the god's law. Eternal law refers to the dictate from the god's divine reasons, which is always invariable (Aquinas, 1265-1274). This is the god's perfect law. While the natural law is just the rational creature's participation of the eternal law, it is nothing different from the eternal law (Aquinas, 1265-1274). As rightly commented by the latter philosophers, such as Friedrich Nietzsche (Nietzsche, 2016),[1] the human's natural rights were used as weapons to challenge the secular positive law's and the king's authority. The Antigone's speech written by the ancient Greek tragedian Sophocles is an example (Sophocles, 441 BC).[2] In his mind, a moral man could not over-run the god's unwritten and unfailing laws, namely, the eternal law (Sophocles, 441 BC). Indeed, human's natural rights according to natural law are unchangeable and universally applicable (Aquinas, 1265-1274; Cicero, 1928). They can never be created or amended by secular men. They could only be discovered.

Though the natural law is unchangeable, regardless of in the name of the god's will (Aquinas, 1265-1274) or the law of the nature, neither the god nor the nature would explicitly show us what the law is. It can only be sensed by humans' rationality (Schopenhauer, 1977).[3] However, it does not mean that the human rights are totally dependent on the individual human's feeling (Wilson, 1993). Otherwise, human rights are changeable, which contradicts with the former claims. Holocaust can also be justified on the basis of an individual's feeling, which is apparently unreasonable.

To determine the humans' rational consciousness and the contents of human rights, it is helpful to refer to the basis of human rights, i.e., the origin of human rights. The basis of human rights is happiness. Every human pursues the good (Aquinas, 1265-1274; Aristotle, 1999; Liao, 2015; Pufendorf, 1990; Rawls, 2005). As proposed by Socrates, Plato, Kant etc., happiness is the ultimate good (Frede & Lee, 2003; Guyer, 2019), namely eudaimonism (Plato, Symposium 205a2-3) (Pasnau, 2023; Vlastos, 1984). Though Aristotle claimed that the happiness is only one supreme good, besides which there are also honour and pleasure (The Varieties of Goodness, 89, citing E.N., 1097bl-2) (Kenny, 1965). However, pleasure and happiness are in essence the same thing (pleasure). When a person pursues honour, it means that the honour is the end pursued by the person. In other words, the person still pursues the satisfaction of the end, which should also be defined as happiness according to the below demonstrated Kant's definition of happiness. Hence, happiness is the ultimate good and the origin of the human rights.

About the conception of happiness, Plato thought that happiness is the achievement of the cherished goal (Frede & Lee, 2003). The Kant's definition on happiness is pretty similar. However, some argue that Kant himself is not harmonised on the ground that in Groundwork Kant identified it as the satisfaction of the end that people desire (G 4:399), whereas identified it as a state of satisfaction in other works (CPrR 5:22; MM 5:387) (Hills, 2006). This is a misunderstanding. The satisfaction of the desired end and the status of satisfaction are in essence the same. The state of satisfaction cannot exist without an end. Hills indeed has rightly pointed out that people may be disappointed when some of their "ends" are realised. However, the problem is not on the state of satisfaction, but on the "ends". In other words, people actually do not desire that state which is not a real end. For example, if a person desires richness, then the state of satisfaction occurs when the person becomes rich. In the meantime, the person also desires to be a university professor, because the person thinks that being a professor will make him or her rich. However, when he or she becomes a professor, the person finds that being a professor cannot make him or her rich. At this time, Hills thinks the satisfaction of the desired end and the status of satisfaction do not conform with each other. The solution to this paradox is to discover that being a professor is not a real desired end, because of some misperception of the world. Hence, the satisfaction of a real desired end equals to a state of satisfaction. Influenced by Kant, Nietzsche also deemed the happiness as a feeling of contentment (Turner, 2019).

To achieve the happiness, i.e., to achieve the desired end, the prerequisites are categorised into the right to freedom / equality / dignity, and justice. Following the theory that rights and obligations must correspond to each other, the kinds of the right can be deduced from the kinds of the obligation. The unconditional obligation for the whole humankind's happiness, set by the natural law (Schneewind, 1993), is morality (Guyer & Guyer, 2005; Massimi, 2016; Watkins, 2019). Its contents are enshrined in the categorical imperative (CI) which was come up with by Kant. From the Kant's CI, the right to equality, the right to dignity and the right to freedom (Johnson & Cureton, 2022) can be deduced from the formula of universal law (FUL) (AK 4: 421), the formula of humanity (FH) (AK 4: 429) and the formula of autonomy (FA) (G 4:432). The deduction is laid down below. Justice is the last human right. Says the aforementioned rights are substantive rights, the right to justice is the remedy (Justinian, 1911). Violation of rights will inevitably happen. As the former Chief Justice of Canada, Beverley McLachlin, said, "Rights without remedies can be viewed as empty promises…" (McLachlin, 2009). For a right to be a real right, remedy – right to justice, is necessary.

Before the exploration of the contents of the equality, dignity and freedom, to completely understand them, it is necessary to address the sameness of them. Though the CI encompasses three formulas, FUL, FH and FA (McLachlin, 2009), there is in fact only one imperative. This is told through the single form of the word "imperative". In other words, the FUL, the FH and the FA are equivalent (G 4:438) (Allison, 2011; Kant, 2006).

To clarify the formulas, several conceptions must at first be explained. Maxim refers to the rule governing our behaviours (McCarty & McCarty, 2009). In a syllogism, if the conclusion is what we should do, then maxim is the major premise. An implicit requirement for Kant's morality is that all the decisions must be made with rationality on the ground that Kant's principle is a principle of acting rationally. Rationality, another basic element of Kant's morality, means being based on non-contradictory and systematically sufficient reasons (Guyer, 2019). The principle of sufficient reason requires an adequate reason behind every act (Guyer, 2019). Kant has tried to identify the unconditioned pursuit of happiness inside human as the sufficient reason (Guyer, 2019). Then Kant assumes that people cannot alone obtain their happiness (Guyer, 2019). Thus, other people's help is necessary. Applying the FUL, in order to require other people's help, you offering help to others is also required. As a result, realising individual happiness becomes the motivation to realise universal happiness, thereby to comply with morality.

The first formula, FUL, is to "act only in accordance with that maxim through which you can at the same time will that it become a universal law" (AK 4: 421). From the obligation's perspective, it requires a series of tests before a maxim is applied as universal law. The first step is to form a maxim in the form of "I will do action A to achieve purpose P" (Kant, 2006). The second step is to turn it into a universal law, i.e., everyone will do action A to achieve purpose P (Johnson & Cureton, 2022; Kant, 2006). The third step is to reconsider the maxim and decide whether there is a contradiction, i.e., whether you still can at the same time will it (Korsgaard, 1985). If you still can and will, then it is permissible. Otherwise, it is not permissible. Assuming person A will earn money through establishing a very polluting factory. In a world where this is a universal law, everyone, including person A's neighbours, will earn money through establishing a very polluting factory. At this moment, person A does not will the maxim to be universal law, because he or she becomes the victim but not the beneficiary. When he or she does not will it, a universal law should not be established due to the contradiction within person A's will. From the perspective of sufficient reason, the universal happiness is thwarted because the desired end of staying healthy cannot be satisfied.

The second formula, FH, is to "act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means" (AK 4: 429). It requires us to treat all the other people as the ends per se (Johnson & Cureton, 2022), but not the means to achieve our end. Therefore, other people's ends should not be sacrificed for our ends. This is the respect that a human deserves (Kant, 2006). So do other people's desired ends.

The third formula, FA, indicates "the idea of the will of every rational being as a will that legislates universal law" (G 4:432). It means that everyone is the legislator of the universal law (Kant, 2006). Besides, the obedience from us to the law is autonomous because the law is willed and endorsed by us (Kant, 2006).

To prove that there is only one imperative, i.e., FUL = FH = FA, it is sufficient to prove FUL ⊆ FA, FA ⊆ FH and FH ⊆ FUL.[4] If FUL ⊆ FA, then every element in the set FUL also belongs to the set FA. Thus, none of the element in the set FUL belongs to the set ¬FA. To get the conclusion that FUL ⊆ FA, it is sufficient to prove that ¬FA∩FUL = ∅.[5] In the same vein, it is sufficient to prove that ¬FH∩FA = ∅ and ¬FUL∩FH = ∅.

¬FA means that not every rational being's will legislates the universal law. As a result, there is at least one person's will which does not legislate universal law. Assuming this person is person A, then person A does not legislate universal law. According to FUL, person A can act only in accordance with that maxim through which he or she will that it become a universal law. Since there is no universal law willed by person A, person A cannot act. The set FUL is an empty set, i.e., ¬FA∩FUL = ∅.

¬FH means not to act that you use humanity, i.e., not always treat others as an end, treat other at least sometimes merely as a means. Under the circumstance where some people are treated merely as means, their wills do not legislate the universal law. Otherwise, that they will not being treated as means is universal law, then they are not means. As a result, none of the circumstances under ¬FH meets the requirements of FA, i.e., ¬FH∩FA = ∅.

¬FUL means not to act only in accordance with that maxim through which you can at the same time will that it become a universal law. It contains three situations: 1) act in accordance with the maxim through which you can but you at the same time do not will that it become a universal law; 2) act in accordance with the maxim through which you cannot but you at the same time will that it become a universal law; 3) act in accordance with the maxim through which you cannot and you at the same time do not will that it become a universal law. Under the latter two situations, you cannot act. Thus, the result is ∅. Under the former situation, you act according to a maxim that you do not will it being a universal law. In other words, this maxim only applies to some people in the word. Thus, this maxim either makes these people the superiors, or the inferiors. Under both circumstances, there exists the inferiors. The inferiors cannot enjoy the privileges that the superiors can enjoy. Concerning these privileges, the inferiors are used as means but not treated as ends. As a result, it contradicts the FH, i.e., ¬FUL∩FH = ∅.

Since ¬FA∩FUL = ∅, ¬FH∩FA = ∅ and ¬FUL∩FH = ∅, then FUL ⊆ FA, FA ⊆ FH and FH ⊆ FUL, thereby FUL = FH = FA. On the basis of FUL = FH = FA, the human rights deduced from FUL can also be deduced from FH and FA. Though the formulas describe the imperative from different points of view, they all contain the contents of the human rights emphasised by the other two formulas.

After deducing that FUL = FH = FA, the next step is the deduction of the contents of the equality, dignity and freedom.

The FUL is formulated from the perspective of equality. That when a maxim applies to you, it also applies to other people, means that you and other people have the same status before the nature. Therefore, you and other people are treated in alike

ways. In other words, the likes are treated alike (Crisp, 2014), and only the relevant factor are cared (Gosepath, 2021). This is exactly the meaning of equality. Equality does not indicate the physical sameness, because humans are born differently in physical. It nonetheless indicates the sameness in status, thereby rights and duties (Gosepath, 2021).

The FH was formulated from the perspective of dignity. Dignity is what a person deserves as a human being, namely, humanity. Hence, the content of FH is exactly the content of the right of dignity.

The FA was formulated from the perspective of freedom. The right of freedom is thereby directly shown. Freedom contains positive freedom and negative freedom (Berlin, 2002). Positive freedom ensures that everyone is the legislator of the universal law. Negative freedom protects against other's unjustifiable interference, such as unreasonable arrest. Since everyone is the legislator, for a maxim to be a universal law, it has to be willed by all the people. Unjustifiable interference is not willed by all the people, thereby excluded.

The same as FUL = FH = FA, equality = dignity = freedom.

As equality = dignity = freedom, it is possible to deduce other rights from them, such as the right to life which refers to the prevention of unnatural and premature death (United Nations Human Rights Committee, 2019). It is not an independent human right. Since other people have no positive obligation to help one live, but only have the negative obligation of not harming other's life, the right to life can be deduced from equality, dignity or freedom. For example, to be a universal law, the maxim should be either all are prevented from harming other people's life, or no one is prevented from harming other people's life. Then in the light of equality and freedom, the latter fails because not everyone will it. In the light of dignity, the latter fails because the people being harmed are not treated as ends.

Reflection in Positive Laws

Though, as aforementioned, positive laws are not the bases of human rights and may contradict with the real natural laws. They can be utilised as references reflecting the humans' perceptions, i.e., what kind of human rights have already been discovered by human.

Among all the positive human rights laws, the paramount one should be the Universal Declaration of Human Rights (UDHR) despite its non-binding force. The second level contains International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR), on the grounds that they are both international human rights covenants and ratified by a huge number of states. Regional human rights conventions, namely the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR) ("European Convention on Human Rights ", 1950), American Convention on Human Rights (ACHR) ("American Convention on Human Rights," 1969) and African Charter on Human and People's Rights (ACHPR)

("African Charter on Human and People's Rights," 1986), are on the third level, for the reason that they also play an important role on the realisation of human rights.

UDHR did not categorise the human rights, but only list the fundamental rights which humans have. Among all the human rights, UDHR never expressly manifested, notwithstanding some are more fundamental than the others. These more fundamental rights should be called primary human rights. The others are secondary human rights.

The right to freedom and equality ("Universal Declaration of Human Rights," 1948), and the right to justice ("Universal Declaration of Human Rights," 1948) belong to primary rights. Though UDHR did not explicitly mention the right to dignity, it recognises that the inherent dignity of human beings is the foundation of these human rights ("Universal Declaration of Human Rights," 1948). In addition, it does not mean that there is no provision addressing right to dignity. This right can be concluded from other rights, such as the right to non-torture ("Universal Declaration of Human Rights," 1948). Torture is a kind of inhuman treatment. It violates FH. Thus, the obligation of not treating others in an inhuman way is the respect to other humans' humanity, namely respect to dignity.

The other rights, such as the right to non-slavery ("Universal Declaration of Human Rights," 1948), are secondary rights due to their submission to the primary rights. The secondary rights can be regarded as one aspect of the primary rights. For example, slavery refers to a kind of submission and violates the equality between people. The right to non-slavery is an aspect of right to equality. Even if we remove the right to non-slavery from UDHR, we can still deduce it from the right to equality. As a result, only the primary human rights can be qualified as the origin.

ICCPR and ICESCR further classify the primary human rights into two groups, civil and political rights in addition to economic, social and cultural rights. Whereas the former focuses on the right to freedom, right to equality, right to dignity, the latter focuses on the right to freedom and the right to equality. They both recognise that the inherent dignity of human beings is the foundation of these rights ("International Covenant on Civil and Political Rights," 1966; "International Covenant on Economic, Social and Cultural Rights," 1966).

In the same vein, the regional human rights conventions, ECHR ("European Convention on Human Rights ", 1950), ACHPR ("African Charter on Human and People's Rights," 1986) and ACHR ("American Convention on Human Rights," 1969), reaffirmed and protected these human rights.

The Human Right as the Origin of Other Rights Through the Junction, Constitution

The Junction: Constitution

The Giving of Rights

In order to better pursue happiness, humans were thinking of a mechanism protecting the preconditions, i.e., the human rights. Humans do have all these rights, nevertheless not every human can rightly perceive this point. Even when they have perceived, not every person would respect other's human rights for the craving for their own happiness (Pufendorf, 1990). This is also the human nature (Kant, 1990). Besides, individual human must associate with each other so that they can avoid the potential harm from the nature, such as wild beasts and floods. In addition to the harm regardless of where it comes from, some kinds of happiness can be better realised by human collectives but not human individuals. At this moment, a machine, which is more powerful than the human individual to protect humans' rights and bring humans a higher standard of life, is desired. This machine is state (Kant, 1990).

For a state to function well, it must have relevant power. However, while the human rights are conferred by the inherent human nature, the power of the state is not. A process of the transfer of rights is necessary. Similar to the process of states concluding contracts to form a federal country and transferring power to it, from individual humans to a state, there is also a social contract. Like all the other contracts, the conclusion of the social contract also experiences two phases, negotiation and consent. There are three approaches for the negotiation (d'Agostino et al., 2024), namely, bargaining (Nash, 1950), aggregation (d'Agostino et al., 2024) and equilibrium (Nash, 1951). Regardless of the approach applied to get the final agreement, the most important part is, nevertheless, the consent on the basis of the right to freedom. Like the juridical act, the core element for the contract to be effective is the intention of the subject to create effect (Schmidt, 2012). The consent to be bound by the contract legitimises the binding force of the contract (d'Agostino et al., 2024). In other words, the consent from the individual is the source of the force. Since the consent of the individual is the source of the contract's force, the power of the state should be strictly limited inside the scope of the contract.

Concerning the contents of the given rights, the core idea "pursuing their own happiness" as well applies. Different happiness leads to the diversity in the form of social contract, thereby the contents of the given rights. Unlike Rousseau's social contract theory (Rousseau, 1990) and Kant's social contract theory (Kant, 1990), which both define a single form of the social contract, this paper advocates that the forms of social contracts and the contents of the given rights must differ from each other as people's pursuits vary. Against Rousseau, humans only give part of their rights to the rights pool. Like the European Union can only exercise the power which its Member States have transferred via the constitutional treaties, the states as well can only exercise the power which its people have transferred. It means that the states by no means can override those ungiven rights. For example, from the perspective of the right to dignity, the human right is not transferred. Otherwise, since the right holder can give up their rights, the state can give up the people's dignity and

treat the people in an inhuman way. Against Kant, at least in part of the world such as European Union, the basic freedom relating to people's daily life cannot be lawfully deprived. A state can tempt people to eat meat by such as price mechanism, notwithstanding cannot force its people to eat meat. According to Kant who purported that all the humans give all their freedom to the state during the conclusion of the social contract, forcing people to eat meat, maybe not under every circumstance but under some, then becomes lawful. This result is unreasonable. Besides, there are some positive empirical examples of the diversity on people's happiness. One is the difference between the German Basic Law and the Portuguese Constitution. In the light of the German Basic Law, Germany is a federal state ("Basic Law of Germany," 1949). It shows that one of the Germans' desired ends is having a federal state. According to the Portuguese Constitution, Portugal is a unitary state ("Constitution of Portugal," 1976). It shows that one of the Portugueses' desired ends is having a unitary state. The difference between the end of having a federal state and the end of having a unitary state indicates the diversity of happiness. Other constitutional examples include the different arrangements of the separation of powers, the different contents of the presidents' responsibilities and so on. While the German president appoints and dismisses the federal judge("Basic Law of Germany," 1949), the Portuguese president does not do it ("Constitution of Portugal," 1976).

However, the diversity of the social contract does not indicate that the contents of the contract can be totally unlimited as long as the people consent. The different forms of the contracts result from the right of freedom. Since freedom = equality = dignity, the exercise of the right of freedom is also the exercise of the right of equality and the right of dignity, i.e., the contract must at the same time fulfil the requirements of the equality and the dignity.

Though the contracts are diverse, their function is common, i.e., showing the people what rights are transferred, and what power the state has. The states are invisible. They are not real machines. The function of the states must be realised through humans, such as the president of the state, the people working in the judicial departments. When humans intervene, their own happiness and the whole state's happiness inevitably contradict with each other (Rousseau, 1990). After all, the power itself is some people's final happiness. It becomes necessary again to prevent misuse of the power and the violation of other's rights. The first step is to set a clear boundary through the constitutions.

The constitution is the social contract per se, which reflects the conclusion of the contract (the form of the country), how to revise the contract (the amendments of the constitution), and the contents of the contract (the granted rights, namely, the power of the state organs). These provisions in the constitution are similar to the clause on the conclusion of a civil contract, the clause on the revision of a civil contract, the clause on the right and obligation clauses in a civil contract. Through randomly picking and examining the provisions of the constitutions in different continents and different legal families, the constitution as the social contract is proved.[6] The chapter

addressing people's basic rights is in essence a restatement but not an affirmation of people's rights. In some cases, it is even not an exhausted list. Hence, with or without this chapter, people have those rights anyway. For instance, there is no contents addressing people's rights in the French Constitution and the original US Constitution. It however does not mean the French people and the American people have no rights.

After the conclusion of the contract, the nationality signals that this person has signed the social contract with the people holding the same nationality. Under the situation where a person, such as a new-born baby represented by its parents, intends to join this contractual relationship after the conclusion of the contract, the obtaining of one nationality, irrespective of by birth or naturalisation, can be deemed as joining the social contract and giving the rights.

The Taking Back of Rights / Withdrawal from One Contract

One may argue that the democratic regime results in the submission of the minority to the majority. He or she is deprived of his or her free will when he or she does not consent to the terms in the social contract, but he or she cannot revise it. Freedom and democracy are always contradicting with each other. Besides, a person always plays the role of a minority at one time or another. The only difference is regarding issue A or issue B. Therefore, either humans have no freedom, or all the constitutions in the world are violating people's freedom.

To defend my theory, it is worth noting that to form a state is not the precondition of pursuing happiness, thereby being one's national is neither a human right nor a human obligation. Some people are born stateless; some people change their nationalities; some people decide to be stateless. For example, Nietzsche has given up his Prussian nationality and been a stateless person in his whole life after age 24 (Antonio, 2015). By renouncing their nationality, the humans can take back their rights which were given.

If a person does not withdraw their rights, the compromising per se is also an expression of free will. Individual human is able to withdraw himself or herself from the social contract as long as he or she is willing to give up all the benefits attached. Minority groups can also withdraw their consents to the old social contract and conclude a new one. The option is always there. However, they do not choose the option. One should keep it in mind, that the human rights only guarantee that people can pursue but do not guarantee that they can always get whatever they want. These people are weighing what they will get and what they will sacrifice. When the attached benefits can bring more happiness, the people will always keep their nationality. When the to be sacrificed happiness weighs more, the people will give up the nationality. This choice is made out of their free will. As a result, they still have freedom, and the democracy has no conflict therewith.

Indeed, in modern times, most people's nationalities were chosen by their parents but not by themselves. For example, when the parents are Germans, then the babies may be born Germans ("Staatsangehörigkeitsgesetz of Germany," 1913). When the

parents desire a US nationality, then the parents fly to US and give birth to the babies, the babies become US citizens ("14th Amendment of US Constitution," 1868). People have no choice before they become adults, not to mention as a baby. However, does it mean that the babies would love the contract when they grow up just because of the nationality given to them without their consent? The answers vary. The in Germany born German may desire the US nationality; the in US born American may prefer the German nationality. When they have the choice, it is their freedom to leave and join the group which is closer to their happiness. The way to leave is giving up one nationality.

Human Rights as the Origin of Other Rights

No matter how long or how detailed a constitution is, it is still too abstract to run the whole state. Thus, for the achievement of the goal of the social contract, humans create different sub-rights under the framework of constitution through the legislative organ. The legislative organ can be regarded as the brain of the machine and decide how to move closer to the final goal. The methods adopted by them is the normal law. The rights based thereon are either the manifestation of the human rights or the tools to achieve human rights. For example, the freedom in the civil law area is a manifestation of the human rights, while the right to claim some social welfare is a tool right. They originate from the constitution, thereby as well from the human rights. Unlike the human rights which can never be derogated, those sub-rights which are used as tools can be derogated when there is a better way to realise the goal.

In contrast to human rights or the manifestation of human rights, the key characteristics of these tool rights are their diversity and dispensability. As the tools are used by the states to facilitate the pursuit of happiness, diversity occurs here because they depend on the conditions of the state. For example, people in some states such as Germany have the right to free education, whereas people in other states do not. In the light of the conclusion above, that human rights are eternal and unchangeable, if the humans living in ancient time had no human right to free education, then the humans in modern time as well have no human right to free education. In addition, even in modern time, there are still many states which have no material condition to provide all of their nationals for free education. It is unreasonable to claim that these states have breached their nationals' human rights. Therefore, it is unreasonable to classify the right to free education as human right. Since it is not human right, states are allowed to provide no free education. This example manifests the diversity and dispensability of the tool rights. Another example showing the dispensability is the right to litigation escorting people's right to justice. The courts are obliged to accept eligible cases. It notwithstanding is not the only way to realise justice. Right to justice does not equal to right to litigation. Before the officially establishment of judiciary system, private remedy has ruled the human society for a very long time. It then becomes reasonable to imagine that the litigation would one day also be superseded when one better remedy comes to life.

Conclusion

As an inherent human nature, every human pursues happiness. To achieve the diverse happiness, the human rights function as the necessary tools. Pursuant to the natural law theory and reflected by the positive human rights law, the human right contains the right to freedom, equality, dignity and justice.

Along the human history, the human individuals and human groups have formed states through the social contract, namely the constitution. As the junction, the constitution is laid between the human rights and other rights. It receives the human rights transferred by the humans, and transforms these human rights into different types of powers, including the legislative power. The legislative organ then on the basis of the legislative power entitles the people different other rights. As a result, the human rights are the sources of other rights.

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No data or materials were generated or used during the study.

Note

1. “Die Oper ist die Geburt des theoretischen Menschen, des kritischen Laien, nicht des Künstlers: eine der befremdlichsten Tatsachen in der Geschichte aller Künste. Es war die Forderung recht eigentlich unmusikalischer Zuhörer, daß man vor allem das Wort verstehen müsse: so daß eine Wiedergeburt der

Tonkunst nur zu erwarten sei, wenn man irgendeine Gesangsweise entdecken werde, bei welcher das Textwort über den Kontrapunkt wie der Herr über den Diener herrsche."

2. Sophocles, Antigone, lines 450-460, Antigone replied to the King Creon when he asked her whether she dared to overstep the order: "For me it was not Zeus who made that order. Nor did that Justice who lives with the gods below mark out such laws to hold among mankind. Nor did I think your orders were so strong that you, a mortal man, could over-run the gods' unwritten and unfailing laws. Not now, nor yesterday's, they always live, and no one knows their origin in time. So not through fear of any man's proud spirit would I be likely to neglect these laws, draw on myself the gods' sure punishment."
3. "… Diese rein moralische Bedeutung ist die einzige, welche Recht und Unrecht für den Menschen als Menschen, nicht als Staatsbürger haben, die folglich auch im Naturzustande, ohne alles positive Gesetz, bliebe und welche die Grundlage und den Gehalt alles dessen ausmacht, was man deshalb Naturrecht genannt hat…"
4. "FUL ⊆ FA" means that FUL is a subset of FA, or FUL is equal to FA; "FA ⊆ FH" means that FA is a subset of FH, or FA is equal to FH; "FH ⊆ FUL" means that FH is a subset of FUL, or FH is equal to FUL.
5. "¬" means negation; For example, P means that Amy has black hair, then ¬P means that Amy does not have black hair; "¬FA∩FUL = ∅" means that no item in the set ¬FA at the same time belongs to the set FUL; "¬FH∩FA = ∅" means that no item in the set ¬FH at the same time belongs to the set FA; "¬FUL∩FH = ∅" means that no item in the set ¬FUL at the same time belongs to the set FH.
6. Africa: Congo, Mozambique, Equatorial Guinea, South Africa; Asia: China, India, Japan, Mongolia; Europe: France, Germany, Portugal, Russia; Middle East: Iran; North America: The United States; South America: Argentine, Brazil, Venezuela.

   Civil law family: France, Germany, Japan, Portugal etc.; Common law family: India, The United States etc.; Islamic law family: Iran.

   Argentine Constitution: In the preamble, the form of the country and the establishment of the constitution are stated. Section 30 of chapter I addresses the revision of the contract, namely the amendments of the constitution. The second part of the constitution addresses the formulation of different state organs and grants them relevant power.

   The same as the Argentine Constitution, the following constitutions also contain the above-mentioned contents: Brazil Constitution preamble, article 60 and title IV; Chinese Constitution preamble, chapter three and article 64; Congo Constitution preamble, title III and title VIII; Equatorial Guinea Constitution preamble, part two chapter I and part five; French Constitution preamble, titles II – XI and title XVI; Germany Grundgesetz preamble, articles 38 – 69 and article 79; Indian Constitution preamble, part V and part XX; Iran Constitution article 1, chapters 6 – 13 and article 177; Japanese Constitution

preamble, chapters IV – VI and chapter IX; Mongolian Constitution preamble, chapter three and chapter six; Mozambique Constitution preamble, title V and title XV chapter II; Portuguese Constitution preamble, part III and part IV chapter II; Russian Constitution preamble, chapters 3 – 7 and chapter 9; South Africa Constitution preamble, chapters 3 – 5 and article 74; US Constitution preamble, articles I – III and article V; Venezuela Constitution preamble, title IV and title IX.

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