

On the "Legitimacy of Rights" from the Perspective of Legal Philosophy

Yuxu Wan

Jiangsu University, Wuxi, 212013, China

Abstract: Right is the freedom recognized by the society. It is not innate, but generated by the birth of human and changes with the growth of human ability and the development of society. The history of rights can be divided into two stages: hierarchical privilege and equal human rights. With the development of society, people's "right consciousness" began to awaken, in which human rights are the most basic rights, to which all other rights are attached, so the "right" that deviates from human rights is questionable. Therefore, how can we correctly identify rights and correctly exercise our rights?

Keywords: Rights; Freedom; Power; Legality; Legitimacy; Philosophy of law

1. Introduction

Since right is the freedom recognized by the society, it is not gifted, but given by the society. Society is developing and changing, and human ability also increases with the development of society. Therefore, human rights are historical and specific, and different people in different societies enjoy different rights. Rights are the freedom recognized by the society, and the recognition of freedom by the society includes moral recognition and legal recognition. Therefore, rights can be divided into natural rights and legal rights. The two rights are not parallel or parallel, but subordinate and overlapping. Legal rights are natural rights recognized by the law, and the scope of legal rights is smaller than that of natural rights. Of course, some legal rights may deviate from natural rights, which is recognized by evil law.

Since rights are given by society, they develop with the development of society and human ability. What form is "accepted" in the process of human development?

2. Thoughts on the source of rights

What is "right"? Although the word "right" originated in the west, the right culture has now become a global phenomenon. The entry of "right" in the Oxford legal digest directly describes right as "a seriously misused and overused word". Different schools or scholars can clarify their own opinions by defining and explaining the word "right", and even determine the origin of their theoretical system. There are more than ten kinds of theories, such as qualification theory, assertion theory, freedom theory, interest theory, mana theory, norm theory, etc.^[1]. Hobbes, Spinoza and others regard freedom as the essence of right, or think that right is freedom; while Kant and Hegel also use "freedom" to explain rights, although they have different concepts of freedom, there are also some intersections. "Freedom theory" believes that rights are freedom recognized by the society.

So, what is freedom? Freedom is the relative independence or autonomy of human activities. The so-called relative independence or autonomy of people's activities means that their activities are relatively not subject to other things or others, and can be arranged and carried out independently. The word "relatively" excludes the forces of nature and society, and the acquisition of real freedom is based on understanding and conforming to the laws of objective things. Hegel said: "the spirit is free in its inevitability, and its freedom can be found only in inevitability, just as its inevitability is only built on its freedom... Freedom can also be an abstract freedom without inevitability. This false freedom is arbitrary, so it is the opposite of true freedom, a freedom that is unconsciously bound, subjective and utopian - just a freedom of form."^[2] Engels also said: "freedom is not to get rid of the laws of nature and be independent in fantasy, but to understand these laws, so as to make the laws of nature serve a certain purpose in a planned way."^[3] Only when it is beneficial to people's social activities and social life, it cannot be accepted by people in isolation. Therefore, the realization of this freedom recognized by the society can no longer only rely on its own strength, but can rely on the strength of the society, power, especially when

it is violated, it can get the relief of social power. In this way, these freedoms have undergone qualitative changes, that is, they have become a right.

3. "Right" from the perspective of legal philosophy

Since rights change with the development of human ability and social history, it needs to start a new thinking on rights. Malidan, a western new natural jurist, first realized and clearly put forward this point. Malidan pointed out that there are often conflicts between them and "old rights". Dworkin, another representative of the new natural law, raised the issue of the survival right of a few people, especially the weak, in his theory of rights. He pointed out that we should take these people's rights seriously, otherwise a society or country cannot establish a social order that meets the requirements of modern civilization. "The weak in a political society have the right to enjoy the care and respect of their government," he said. He advocated "taking rights seriously", saying that "if the government does not take rights seriously, it will not be able to take the law seriously".^[4] In other words, a qualified government must take the rights of all people seriously by legal means, especially those of the weak, and not only express the demands of the strong and the majority. With the development of society and the rapid awakening of people's awareness of rights, various claims continue to appear, and the scope involved is becoming wider and wider, as if every need of people can be transformed into "rights".

In any case, however, these rights can be broadly divided into two categories:

One is legitimate rights. Of course, the legitimate rights here do not necessarily come into being with the growth of human ability and the development of society. Naturally, they also include the rights that originally existed and are now realized, as well as the rights that should be or need to be fought for. Naturally, with the growth of human ability and the development of society, there will also be conflicts of rights, such as the right to anti demolition of houses, the right to compensation for medical accidents, the right of consumers to after-sales service, etc., but generally speaking, the interests pursued by public power are greater than private interests; When the two rights cannot be taken into account, we can only sacrifice personal interests by giving reasonable compensation to individuals.^[5]

The other is the illegitimate "right", or the right to be pretended. It is the behavior that some people pursue based on the wrong concept of life and society, which is not conducive to others and society. Therefore, it is also a behavior that deviates from human nature and objective laws.

Since rights are divided into real or legitimate rights and improper "rights", people's needs are increasingly diversified, the awareness of rights is rapidly awakened, and various claims are put forward for various rights. Then, we need to judge the above two categories of rights, and exclude the illegitimate "rights", or the fake rights, which will inevitably involve the judgment of the legitimacy of the rights.

4. Basis for judging the legitimacy of rights

The legitimacy of rights should not only meet the source of rights (meet the theory that rights come from "freedom") but also be recognized by the current society. More importantly, it has to meet the standards of the concept of human rights. Therefore, we must strictly distinguish whether rights are legitimate rights:

The first is to see whether it is true freedom. Rights is freedom recognized by society. Freedom is unique to rational human beings. It abstracts and summarizes the experience gained by sensibility, creates concepts, theories and scientific knowledge, and achieves a certain degree of understanding of the essence of things. In addition, rights are essentially a relationship between people, so only those who live in society have them.

Secondly, this "freedom" should be recognized by the society. There are mainly two ways of social recognition: moral recognition and legal recognition: (1) "moral recognition" is "in line with the tradition or recognized values of the society". This value concept, also known as "conscience", is a steelyard used to evaluate things in people's hearts. It is a spiritual link connecting all members of society, unifying people's spirit and action and establishing a unified order. This means that rights must be "moral". Kant, a German philosopher, once had a profound discussion on morality. He believed that if human behavior should have "morality", it must comply with three principles: Firstly, the principle of "universality", which is not only widely recognized by social members, but also in line with the law of human development; Secondly, it is in line with the humanitarian principle of "man is the end", that is, we should get along with others equally, respect their personality and form a common value goal; Thirdly, self-

discipline, which needs to conform to the laws of nature. (2) Legal recognition refers to a special activity that the state organ with legislative power recognizes the custom (Law) and endows the custom (Law) with legal status in accordance with legal procedures within the scope of functions and powers stipulated by law. Therefore, only when a claim is recognized by the law can it be authoritative and truly recognized by the members of the whole society. This means that rights should not only have "morality", but also "legitimacy" in general, which is only a formal standard or shallow standard to measure the authenticity of rights. (3) The deep-seated standard is "social legitimacy". Legitimacy is a concept used by people to describe the rationality and inevitability of the existence of objective things. Moral concepts and legal systems are formed by people in all ages on the basis of understanding the objective law and human nature. Their conformity with the objective law and human nature is relative and has the limitations of the times. Therefore, they are not absolute as measurement standards.

Thirdly, comply with human rights standards. It is recognized as a standard to measure the political and legal system in the modern democratic society ruled by law, and it is also a standard to measure the rationality of human behavior. Its core concept is equality of rights and treating others with humanitarian concept. The fundamental meaning of human rights is to oppose hierarchical privileges, so that all people, especially the weak, can also enjoy human dignity, that is, enjoy independent personality and matched material treatment. Therefore, all claims that violate the concept of human rights in modern society, that is, the pursuit of hierarchical privileges, are unreasonable and should not have the nature of rights.

5. Conclusions

One of the characteristics that human beings are different from other creatures is to enjoy freedom, but one's freedom cannot infringe on the same freedom of others and the overall interests of society. "Rights" is freedom recognized by the society. It is generated by the birth of man. It changes with the growth of man's ability and the development of society. The concept, extension and development of right are also deepening. Therefore, we should calmly think about the essence of rights, distinguish their types, and find the standard to judge their rationality. Only in this way can we truly understand and correctly use rights.

References

- [1] Zhang Wenxian. *Jurisprudence* [M] Beijing: Higher Education Press, 2007:141
- [2] Hegel. *Lectures on the history of philosophy: Volume 1* [M] Translated by Helin, Beijing: Commercial Press, 1983:31
- [3] Marx, Engels. *Selected works of Marx and Engels: Volume III* [M] Beijing: People's publishing house, 1972
- [4] Maridan. *Man and State: Chapter IV, Section VI* [M] Translated by Shen Zongling, Beijing: China Legal Publishing House, 2011:90
- [5] Ronald Dworkin. *Take rights seriously* [M] Xin Chunying, translated by Wu Yuzhang Beijing: China Encyclopedia press, 1998