



FACULTY OF JURIDICAL SCIENCES

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Lecture-21



Theories of rights:

There are compelling theories of rights offered by several theorists.

Utilitarianism:

For the utilitarian, the just action is that which, relative to all other possible actions, maximises utility or “the good” (defining “the good” is the subject of philosophical conjecture and beyond our scope here). This is the utility principle. Utilitarianism is solely consequentialist; the justice or injustice of an action or state of affairs is determined exclusively by the consequences it brings about. If an action maximises utility, it is just. On this account, therefore, rights are purely instrumental. It is also worth noting that many in the utilitarian tradition have expressed hostility to the notion of rights of any sort. Utilitarian will honour a right if and only if it will lead to the maximisation of utility. This statement also indicates the limits of all rights. If the exercise of a particular will not maximise utility, the utilitarian is obligated to violate that person’s rights for the sake of utility. The point at which the letter of the right defeats the purpose (i.e. the point at which the exercise of a particular right will not maximise utility) is the point at which society may justly curtail that right.

Rights are limited by the utility principle. If the exercise of a right maximises the good, the right ought to hold. If it fails to do so, the right may be justly abridged.

Challengers of the utilitarian account of rights argue that in some cases it extends rights too far and in other cases it restricts rights unjustly.

Kantianism (Deontology):

Kant proposes that the essence of morality is captured by what has been called the Categorical Imperative. In below paraphrase, this reads:

Act only on those rules of action that you could be universal laws.

The Categorical Imperative is a rule for testing rules of conduct. It will exclude as immoral any rule of conduct that implies that one person may do something but another, in relevantly similar circumstances, may not. In other words, it demands consistency. What’s all right for me is all right for you if our relevant circumstances are similar. If I may throw my toxic waste into the river to save money for myself, then you may do so likewise. But of course I would not want you to do that, so it would be wrong for me.

This is relevant to human rights, because we think of human rights as universally applicable to human beings. And Kant says that what is morally permissible applies to all rational beings. It is also relevant that this test tends to endorse rules of action that protect our most basic interests, just the sorts of things that rights protect.

Kantianism is an explicitly non-consequentialist ethic. Kant believed that the consequences of our actions are often determined by contextual factors beyond the control of the individual. Honour and blame are only coherent concepts where the subject is responsible for what they have done. In all appeals to consequences, the locus of responsibility must necessarily be displaced to a broad array of factors, only one part of which is the agency of the individual in question. Moral responsibility for consequence, therefore, is incoherent. Ethics must be a matter of intentions, these being the only things we can evaluate without extrinsic influence. The right action therefore is that which is done in conformity with our moral duty, regardless of consequence.

In the *Groundwork for the Metaphysics of Morals*, Kant argued that one ought to “act only according to that maxim whereby one can, at the same time, will that it should become a universal law.” In other words, our own conduct is only ever just if we can in all conscience will that every other person acted the same way. In the same work, he also professed that one should “Treat humanity, never merely as a means to an end, but always at the same time as an end.” Similarly, our conduct is only just if, in acting, we do not use any other person as a tool to achieve our own objectives. In common way, our moral duty is to only act where our actions satisfy the two tests outlined - universalizability and the ends/means requirement.

Laski's Theory of Rights: Harold Laski, an influential figure and creative writer of political science, who authored about 20 books, has expounded the theory of rights and it is in many respects a classic representation. He describes rights as “those conditions of social life without which no man can seek, in general, to be himself at his best”. Laski calls rights as conditions of social life. Rights are social concept and deeply linked with social life. The essentiality of rights is established by the fact that individuals claim them for the development of their best self. He places rights, individuals and state on the same board in the sense that they cannot be separated from each other and there is no antagonism between them. Laski recommends the long-cherished view that the state has a very important role to play in the realisation and, before that, recognition of human rights. On legal theories of rights, Laski examines the legal theory of state. The central principle of the legal theory of rights is that they completely depend upon the institutions and recognition of state. An individual cannot claim rights if those are not recognised by the state. Mere recognition, moreover, is not sufficient for the exercise of rights. The state must, through law and institutions, implement the rights.

The most significant part of Laski's theory is functional aspect of rights. It emphasizes on the relation between right and duty. He stated that Rights are correlative to functions. The functional theory emphasizes that an individual is entitled to claim rights only when he performs duty otherwise the claim or demand for right cannot be entertained. This definitely opposes widely known theory of legal theory of rights. But today, rights are recognised and protected mainly on political considerations.

Barker's Theory of Right: Barker's view is not theoretically dissimilar from that of Laski. Both are liberal philosophers, but Barker has a clear bias to idealism. The main purpose

of every political organisation called state is to see that the personality of the individual gets ample scope for development. It is the duty of the state to guarantee and secure the conditions essential for that objective. These secured and guaranteed conditions are called rights. Individual's personality cannot develop automatically or under most adverse or antagonistic environment. Development of personality requires favourable conditions and these are to be guaranteed by the state through the enactment of law.

Barker also discusses the moral aspect of rights. He says, that law of the state helps me to secure rights. But rights are claims and the origin is the individual himself. The individual is a moral person and it is his determination that he will develop his moral personality through the rights. His purpose is not to inflict any harm upon the society. The implication of moral being is, - he releases his best efforts for the general welfare of society.

Types of Rights:

1. Natural Rights:

Many researchers have faith in natural rights. They stated that people inherit several rights from nature. Before they came to live in society and state, they used to live in a state of nature. In it, they appreciated certain natural rights, like the right to life, right to liberty and right to property. Natural rights are parts of human nature and reason. Political theory maintains that an individual enters into society with certain basic rights and that no government can deny these rights.

In classical political philosophy "natural right" denotes to the objective rightness of the right things, whether the virtue of a soul, the correctness of an action, or the excellence of a regime. Aristotle stated in Politics (1323a29-33) that no one would call a man happy who was completely lacking in courage, temperance, justice, or wisdom. A man who was easily terrified, unable to restrain any impulse toward food or drink, willing to ruin his friends for a trifle, and generally senseless could not possibly lead a good life. Even though chance may occasionally prevent good actions from having their normal consequences, so that sometimes cowards fare better than brave men, courage is still objectively better than cowardice. The virtues and actions that contribute to the good life, and the activities intrinsic to the good life, are naturally right.

The modern idea of natural rights grew out of the ancient and medieval doctrines of natural law, but for other scholars, the concept of natural rights is unreal. Rights are the products of social living. These can be used only in a society. Rights have behind them the recognition of society as common claims for development, and that is why the state protects these rights. John Locke (1632–1704), the most influential political philosophers of the modern period, argued that people have rights, such as the right to life, liberty, and property that have a foundation independent of the laws of any particular society. Locke claimed that men are naturally free and equal as part of the justification for understanding legitimate political government as the result of a social contract where people in the state of nature conditionally transfer some of their rights to

the government in order to better ensure the stable, comfortable enjoyment of their lives, liberty, and property. Since governments exist by the consent of the people in order to protect the rights of the people and promote the public good, governments that fail to do so can be resisted and replaced with new governments.

2. Moral Rights:

Moral Rights are based on human consciousness. They are supported by moral force of human mind. These are based on human sense of goodness and justice. These are not assisted by the force of law. Sense of goodness and public opinion are the sanctions behind moral rights.

If any person disrupts any moral right, no legal action can be taken against him. The state does not enforce these rights. Its courts do not recognize these rights. Moral Rights include rules of good conduct, courtesy and of moral behaviour. These stand for moral perfection of the people.

Moral rights were first acknowledged in France and Germany, before they were included in the Berne Convention for the Protection of Literary and Artistic Works in 1928. Canada recognized moral rights in its Copyright Act. The United States became a signatory to the convention in 1989, and incorporated a version of moral rights under its copyright law under Title 17 of the U.S. Code. There are two major moral rights under the U.S. Copyright Act. These are the right of attribution, also called the right of paternity and the right of integrity.

Legal Rights:

Legal rights are those rights which are accepted and enforced by the state. Any defilement of any legal right is punished by law. Law courts of the state enforce legal rights. These rights can be enforced against individuals and also against the government. In this way, legal rights are different from moral rights. Legal rights are equally available to all the citizens. All citizens follow legal rights without any discrimination. They can go to the courts for getting their legal rights enforced.

Legal Rights are of three types:

1. Civil Rights:

Civil rights are those rights which provide opportunity to each person to lead a civilized social life. These fulfil basic needs of human life in society. Right to life, liberty and equality are civil rights. Civil rights are protected by the state.

2. Political Rights:

Political rights are those rights by virtue of which inhabitants get a share in the political process. These allow them to take an active part in the political process.

These rights include right to vote, right to get elected, right to hold public office and right to criticise and oppose the government. Political rights are really available to the people in a democratic state.

3. Economic Rights:

Economic rights are those rights which provide economic security to the people. These empower all citizens to make proper use of their civil and political rights. The basic needs of every person are related to his food, clothing, shelter, and medical treatment. Without the fulfilment of these no person can really enjoy his civil and political rights. It is therefore essential, that every person must get the right to work, right to adequate wages, right to leisure and rest, and right to social security in case of illness, physical disability and old age.

Human and Legal Rights:

There is some difference between moral or human rights and legal rights. Legal rights require for their justification an existing system of law. Legal rights are, roughly, what the law says they are, at least insofar as the law is enforced. Legal rights gain their force first of all through legislation or decree by a legally authorized authority. Those who support adoption of laws establishing legal rights often appeal to a notion of human rights. Laws against theft might appeal to notions of a moral right to own property. But human or moral rights must gain their validity through some other source other than legal rights, since people can appeal to human or moral rights to criticize the law or advocate changes in the law (or legal rights), and people could not do this if moral rights were based upon the law.

Contractual Rights:

Contractual rights originated from the practice of promise-keeping. They apply to particular individuals to whom contractual promises have been made. Contractual rights ascend from specific acts of contract making. They normally come into being when the contract is made, and they reflect the contractual duty that another party has acquired at the same time. As a result of a contract, party A has a contractual duty, say, to deliver some good or service to party B, who has a contractual right to the good or service. Contractual rights may be upheld by the law, and in that sense can rest upon legal rights, but it is possible to conceive of contracts made outside of a legal framework and to rest purely upon moral principles. However, such contracts are less secure than contracts made within a legal framework, for obvious reasons. There are numerous examples of contractual rights such as:

- Rights to purchase a particular product or service
- Rights to be sell a product or service
- Rights to be the only seller or buyer

-Rights to delivery and timely payment

-Rights to refunds or repairs

-Various rights according to the specific intentions of each party

MCQ

1. Who wrote the book 'On liberty'?

- A. Henry Maine
- B. J.S Mill
- C. T.H Green
- D. Laski

2. 'A theory of justice' is the work of

- E. J.S Mill
- F. Bodin
- G. John Rawls
- H. Montesquieu

3. The term 'Globalization' was coined by

- I. Kaplan
- J. Theodore Levitt
- K. Burton
- L. Spiro

4. Democracy is rule of

- M. Voters
- N. People
- O. Members of parliament
- P. Political Parties.

5. Who defined democracy as "Government of the people, by the people, for the people"?

- Q. Woodrow Wilson
- R. Lord Bryce
- S. Abraham Lincoln

Laski