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NATURAL LAW AND HUMAN RIGHTS **Genealogy of a Moral**

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Much of the interest of the topic of Human Rights doctrine and of its role in our history and societies lies in the fact that it finds itself at a crossroad between legal theory, international and constitutional law, and political science, on the one hand, and philosophy and cultural anthropology on the other.

A jurist by education, the author studies, practises and teaches law as his profession; and the history of ideas, including but also beyond the history of philosophy, has always been his main intellectual interest.

The purpose of this research is thus to leverage on those two approaches in order to offer a fresh, evolutionary, and more interdisciplinary, look on the subject matter, especially through a critical re-examination of widespread, commonplace assumptions, a re-examination which is performed by going back to the sources and discussing their meaning by replacing them as much as possible in their original context.

In turn, this endeavour aims at identifying the specific roots of the different ideas and of the implicit worldview denoting the contemporary concept of Human Rights, so elucidating as well its fundamental ingredients and tenets, in accordance with a Nietzschean "genealogical" methodology. In fact, the view that an approach emphasising the *Begriffsgeschichte*, the issue of the origins, dynamics and evolution of ideas may deliver more insights than any purely theoretical analysis, is also more recently shared and underlined by several scholars of very diverse fields and persuasions, going from the history of ideas of Arthur O. Lovejoy to the *histoire conceptualisante* of Paul Veyne to the memetics of Richard Dawkins. And this is especially true for issue that pertains to ethico-political, ie, prescriptive, as opposed to factual and descriptive ideas, where any discussion on the "objective truth" of the ideas concerned is of course problematic and a more constructive, modest goal may be rather that of clarifying the issues on the table.

After a brief introduction to the historical debate on the issue, the First Part of the present dissertation examines the alleged anticipations and precursors of Human Rights in pre-Christian Europe, namely in the literary, political and philosophical tradition of the classical civilisation. The adopted method is firstly exemplified with a long excursus on a famous passage of Sofocles' Antigone, which has been innumerable times cited as a primordial proclamation of the supremacy of natural-law principles over positive law (Ch. 1.1). A Heraclitus fragment sometimes mentioned to the same effect is also analysed (Ch. 1.2). A more extensive examination is then performed with respect to the Sophists' and Socrates' possible contributions to the concept of human rights (Ch. 1.3), to Plato's relevant political views (Ch. 1.4), and to Aristotle's anthropology, namely with regard to the concept of nature-dictated individual statuses (Ch. 1.5).

The survey of classical philosophy sources most often mentioned as crucial in Human Rights cultural background then switches to Stoicism (Ch. 1.6); and the first part is concluded by an

in-depth consideration the real meaning of concepts such as *ius naturale* and *ius gentium* in an altogether different cultural strand, that of Roman jurisprudence (Ch. 1.7).

This investigation leads the author to conclude that, while it is true that in hindsight the classical age ends up offering to the future doctrine of Human Rights a conceptual and linguistic framework, its very anthropological and political mindset remains radically different from what is required for its establishment, and the arguments to the contrary appear often affected by “evolutive” interpretations that by definition ignore the concern for a truly historical perspective and plausibility.

A similar process is then reiterated in the Second Part with regard to the alternative worldview emerging from the monotheistic and Biblical legacy, which exactly with respect to the points raised in the First Part that put in doubt the very idea of a Pagan true natural-law concept finds itself in an almost polar opposition to the former (Ch. 121). An operational definition of the anthropological implications of its basic tenets that are relevant to this research is so attempted, finding in the Biblical sources exactly what the classical mindset was lacking as far as the foundation of natural law is concerned (Ch. 2.2). Further obvious links also emerge between religious Judaeo-Christianism and the future Human Rights doctrine, the universality of the Christian turning point emphasising the potential to this effect of its monotheistic background (Ch. 2.3). Conversely, the Revelation appears hardly concerned with human rights in the modern sense of the word, and the historical and logical developments that take us to the modern enunciation of Human Rights doctrine is still a long one, and in fact goes hand-in-hand with the saecularisation of the Christian message (Ch. 2.4).

In the Third Part, the path of this evolution is traced by enucleating the various steps leading to a formalised, explicit natural-law theory involving the existence of natural subjective rights which are entirely independent from positive legal systems, starting with Paul of Tarsus (Ch. 3.1). The Patristic Age (discussed in Ch. 3.2) and especially Augustin (see Ch. 3.3) are shown to provide an increasingly philosophical formulation to the Christian principles and dogmas concerned. This development continues with subsequent medieval authors and especially Albert the Great (Ch. 3.4), ultimately leading to the final, revolutionary synthesis of Thomas Aquinas, where Christian natural-law doctrine finds its ultimate systematisation and elaboration around the ideas of *lex aeterna* and *iustum naturale* (Ch. 3.5). The following period and the Reformation, while sometimes involving a retreat and a decline in comparison with Thomist efforts and their clear distinction between “positive” divine law and natural law, mark their own contributions, especially with regard to the subjective rights of individuals, and see a first comeback of jurists and legal scholars in the relevant arena (Ch. 3.6). A decidedly saecular turn to this discussion, however, is again the product of philosophical thought, and with Grotius sees the birth of a movement which is commonly designated in continental languages as “Jusnaturalism”, but in English more often as “Modern Natural-law Theory”, to distinguish the Enlightenment concept from the traditional Christian natural-law doctrine, in spite of the evident connections thereof (Ch. 3.7). Within this trend, perhaps surprisingly, Hobbes’ work is of some importance in spite of his well-known promotion and defence of absolutism, showing some historical and philosophical connections between modern absolutism itself and human rights (Ch. 3.8). The final, fully-matured, paradigmatic philosophical foundation of the latter is in any event to be found in our view in the thought of John Locke and Jean-Jacques Rousseau, whose obvious, non-secondary differences will nevertheless give place to alternative visions that will both subsequently reflect on Western

political and constitutional experiences, even though the former will remain largely dominant (Ch. 3.9).

With the revolutionary Declarations of Human Rights of the XVIII century, the history of which is examined in Part Four, the Human Rights doctrine is eventually “made law”, embodied and enacted in peculiar constitutional-level instruments, which will be the model of contemporary national, regional and international legislative production in this field. There again, a main tradition of Anglo-Saxon origins is firmly established, which certainly takes inspiration to some extent from the precedents represented from the English feudal Chartas, but that with the American Revolution and the Lockian mindset of many of its actors takes immediately an altogether different nature (Ch. 4.1). Nevertheless, of paramount importance in the success of Human Rights doctrine worldwide is also a competing continental version, which is inaugurated by the French first *Déclaration des Droits de l'Homme et du Citoyen*, and is much more influenced by the Rousseauian philosophy and to some extent by European political traditions, both recent and remote. Later on, this will have consequences on the views on human rights of Socialist regimes and parties (Ch. 4.2).

The Conclusion of this research goes back to the globalisation and cultural hegemony of the Human Rights doctrine in contemporary political and legal discourse, starting with the second half of the XX century and the Universal Declaration, and offers a few comments on the role and significance that this ideology has come to take on in today's world as the final expression of the tendency that permeating its entire history. It also describes how many former doubts and resistances, namely in the Marxist and Christian camps, have been vanquished by its triumphant affirmation, but also how a certain dilution of its specific concepts has inevitably taken place under the spreading of its language; and how new original - albeit for the time being indeed marginal - challenges at a theoretical level are being advanced from intellectuals and commentators of very different persuasions, not in the least as a side effect of bloodsheds and other undesirable developments that have been sometimes blamed on actions allegedly aimed at the promotion of human rights throughout the planet, often at odd with self-determination and popular sovereignties.

This dissertation essentially deals with the history of ideas, as they were expressed and discussed along time in a textual form or another. We have thus extensively quoted the relevant sources, as well as the commentaries thereupon. We could have opted for a much more concise version, leaving to readers to retrace and verify the relevant passages, but especially when we departed from mainstream opinions we decided instead to include them and take this burden away for their convenience, keeping also in mind that a number of works are not easily accessible and/or are unavailable in English. For the same reason, we took the liberty of offering ourselves an English translation of other modern languages whenever we were unable to locate one in printing or on the World Wide Web. They can of course be ignored by those who are conversant the language concerned or have a better translation at hand. References are normally included in footnotes, as opposed to the Author-Date style, in compliance with the recommendations of the Chicago Manual of Style for texts in the fields of humanities, in the format indicated therein, and are again listed alphabetically by author in the bibliography at the end of this work.

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