

# SOCIAL JUSTICE AS THE FOUNDATION OF HUMAN RIGHTS: AFRICAN PERSPECTIVE

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## ABSTRACT

*This study examined the thesis that justice is the foundation of human rights and that conflict, crisis and instability experienced globally are traceable to injustice which have negative impact on human rights. The study relied on available literature as its method of research to expose the dimensions of human rights in Africa. The study went beyond the rhetoric of contemporary discussions on human rights which tend to an unnecessary abstraction observing that these provisions have not helped matters. In order to consolidate human rights as a basis for human happiness, the paper presented a perspective of human rights anchored on the rights to education, work and shelter. This dimension is more fundamental in Africa because they tend to provide the conditions necessary for basic human needs. The study concluded that although human rights are fundamental and natural, yet a strong legal mechanism for their protection and realization is required and that the observance of human rights which is a reflection of core human values and dignity holds the key to development, peace and stability.*

*Keywords: social justice, human rights, foundation, fundamental, injustice.*

## INTRODUCTION

This work argues the thesis that human rights are grounded on justice. The actualization of this thesis is anchored on the necessity of law as an instrument of social justice which has the function of social control and binding force on societies. The discussion of justice cannot be complete without a thorough analysis of the concept of right of the individual in society. Right in this context is derived from justice and also makes meaning through law. What does it mean to have a right? Does it have any relationship to duty? If I say it is my right to have X, am I required to do Y to be able to justify my having X? These are philosophical problems in the analysis of the concept of right. Ordinarily, the word right can be explained this way, it is right (morally good) for us to demand our rights (things due to us). The emphasis in this proposition is that, our action to other people in our relationship with them should reflect the way they act towards us. Therefore, we have as Gonsalves, (1989) observes: right as opposed to wrong; right as a correlative of duty.

Philosophically, right leans on morality and therefore, morally good. It is also used in place of just actions, just law, just deed or just claim. For right to have meaning, it should embody the idea of duty. What we are saying in essence, is that for a more meaningful application of the concept of right, it is expected that responsibilities and obligations are performed. For example, if I say, it is my right to enjoy social services; it is expected of me to pay my taxes. If taxes are not paid, the provision of social services is affected. So, to actualize our rights, certain obligations are expected of us. We have posited that right leans on morality. This implies that right is morally inviolable. On a more definite point, right is defined as one's moral power over what he possesses. From this definition, it means that right exists in the individual possessing it and is therefore, primary and natural.

If it is primary and therefore natural, it means that its violation could be challenged. This is where rights are founded on law so as to give it legitimacy. If we talk of right as natural, it then means that they are fundamental to our social and political relations. This is why they are called fundamental human rights. Fundamental human rights are important because they try to emphasize the humanness of justice. A popular Greek moral crusader Plato did not use the concept of right in his *Republic*, rather he spoke of the human good and human happiness and the virtues and duties required to attain them. Plato's interest in justice was necessitated by the injustice of the Athenian society which was an obstacle to the attainment of social justice.

A close observation and analysis of human rights today is philosophically meaningless, because it is more impoverished and does not contain those human ends envisioned in Plato's theory of justice. The concept of human rights in our political culture today, appears to be more universal, democratic and easily understood especially among the elites. It has assumed a principal gateway into the nature of justice and those ends we see as crucial to our humanity. This position is supported by Fukuyama (2002) when he argued that, rights are the basis of our liberal democratic political order and key to contemporary thinking about moral and ethical issues. He maintained that any serious discussion of human rights must ultimately be based on some understanding of human ends or purposes, which in turn must always rest on a concept of human nature.

Fukuyama's position of grounding human right on human ends or purposes agrees with Plato's theory of justice and the fact that it is dependent on human nature. Human rights in our view, makes a lot of social and political sense when it is viewed from human nature. The concept of human nature found an early analysis in Plato's *Republic* when he divided the soul into three parts- a desiring part, a spiritual part and a rational part. These three parts are not reducible to one another and in many ways not commensurable. The rational

part is given primacy because it acts as the pilot of the soul. It is the seat of reason and cognition and therefore, directs all other parts. Benn and Peters (1963) citing Spinoza understand natural rights thus;

*By natural rights I understand the very laws or rules of nature, in accordance with which everything takes place, in other words, the power of nature itself. And so, the natural right of universal nature, and consequently of every individual thing, extends as far as is power, and according, whatever any man does by the highest natural right, and he has as much right over nature as he has power (Benn & Peters, 1963).*

Spinoza seems to be identifying right with power. His position appears to ground right on power. But such a position appears to be paradoxical because, if we depend on power to actualize our rights then, it may no longer be natural. Basing our realization of right on power shows that such right is meaningless if we do not possess power. The position that right is dependent on power appears to have the bent of legal and moral positivism. Positivism in general is of the view that we cannot derive “is” from ‘ought.’ what this means is that ‘is’ statements are factual and therefore empirical, while “ought” is not. David Hume a British empiricist philosopher is an exponent of this view. In his work on human nature, he made the point that,

*In every system of morality with which I have hitherto met. I have always remarked that the author proceeds for sometime, in the ordinary way of reasoning and establishes the being to a God, or makes observations concerning human affairs; when of a sudden I am surprised to find that instead of the usual copulation of propositions, is and is not I meant with no proposition that is not connected with an ought or an ought not. This change is imperceptible; but is however, of the last consequence. For as this ought or ought not, expresses some new relation or affirmation, it is necessary that it be observed and explained; and at the same time, that a reason should be given for what seemed altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it (Hume, 1985).*

The summary of Hume's thesis is that moral rules cannot be deduced from empirical statements. This view was challenged by Maclutype who stated that one could be derived from the other. For example, if I stick a knife on Smith, they will send me to jail; but I do not want to go to jail; so I ought not (had better not) stick a knife on him. There are a huge variety of human wants, needs and desires that can produce an equal diversity of oughts (Fukuyama, 2002). Utilitarianism also attempted to derive 'is' from ought by creating moral oughts by seeking to satisfy human ends. This is a bold effort in our view.

## **HUMAN RIGHTS: ITS PHILOSOPHICAL PROBLEMS**

According to Kant (1985), right is the condition under which the wishes of one man can be reconciled with the wishes of every other man according to a general law of freedom. The problem of Kant's definition is his notion that all men have equal share in the external goods of the world. This is not always the case. Men have shown that equality is contrary to nature. Men are endowed differently and this makes inequality inevitable. This position does not affect the fact that man has some rights which are natural and fundamental. They are fundamental in the sense that, they are basic to human existence and necessary to man's self-fulfillment and happiness (Omoregbe, 1994).

From this position, we can state that, human right is a condition that is right for people in society by virtue of the fact that they are human beings. If this right is ascribed to human beings because they are human, it then means that, such rights cannot be extended to animals. But sometimes we hear of people campaign for animal rights. This research is of the opinion that since animals are not humans and for the fact that they lack rationality, they cannot have right. If we ascribe right to them it then means that we should expect them to perform some obligations. However, we can be kind to them but we cannot talk of a violation of their rights.

Rand (1968) examines human rights from a moral angle when she says:

*Rights are a moral concept, the concept that provides a logical transition from the principles guiding an individual's actions to the principles guiding his relationship with others, the concept that preserves and protects individual's morality in social context – the link between the moral code of man and the legal code of a society, between ethics and politics. Individual rights are the means of subordinating society to moral law.*

Her position on rights stresses the need for an individual to respect others and also to fulfill his obligation in society. When this is done, the right of the individual will impose a duty on society to respect the moral law. The reason for this is that rights are fundamental to the individuals' social and material well-being. Since these rights are fundamental, it also means that they are natural and not just by custom or conventions. They are not given by man although man tries to confirm their institution through bills, declarations or constitutional provisions.

The concept of human rights seems to have emerged from naturalism. Natural rights faced a severe criticism especially from positivism. Naturalism maintained that what is morally right or wrong is something we can know just as we know anything else about nature (Machan, 1975). Criticisms against natural rights were not philosophically sound and as such, there was a kind of shift in emphasis from natural rights to human rights. To this end, most discourse in political theory today dwell more on human rights or individual or personal rights. This in our view gives room for the source, meaning and the extent of such rights. A human right is explained as something due a person in a social context because, of his membership in the class of humanity because, he is a human being (Machan, 1975). The philosophical dimension to human right is that such a right cannot be given away except by death. It cannot be thought of as object or property but is more of a relationship or

condition. Human right is often thought of to be entirely parasitic or dependent on the idea of a legal right (Machan, 1975). If human right is parasitic on legal rights, it is based on the fact that law is needed to protect it from violation. Most of our human rights are easily violated. This ought not to be. The attainment and sustenance of human rights in our modern society poses a serious challenge to our legal system. We believe that our various laws should aim at protecting human rights and make social justice meaningful. Human rights have always been relevant to political theories and the solution to man's political problems. They have served as the philosophical foundation of Bill of Rights, United Nations Declaration and the various Constitutions of many countries.

There is a flagrant violation and abuse of human rights all over the world. This violation is worse in developing countries. Ordinarily, human rights are grounded on the rule of law but most governments in developing countries abuse these rights with impunity. This is a set back to these countries in terms of attaining human happiness. The function of any government is to achieve the greatest degree of happiness to the greatest number, but our experience shows other wise. This makes it mandatory to evaluate our understanding and necessity of human rights for social justice.

## **HUMAN RIGHTS AS THE GOAL OF JUSTICE**

The social and political dimensions of human rights can be traced to the 16<sup>th</sup> and 17<sup>th</sup> centuries when human rights were systematically documented as instruments of law such as. : The English Petition of Rights (1627); The Habeas Corpus Act (1679); The American Declaration of Independence (1776); The United States Constitution (1787); The American Bill of Rights (1791); The French Declaration of the Rights of Man and Citizens (1789); Most recent is the United Nations universal Declaration of Human Rights (1948), and the European Convention on Human Rights (1949) (Omeregbe,1994).The principle behind these declarations

is to demonstrate in clear terms the limits of power between the state and the individuals that make up the state. This limitation became necessary because, of the absolute powers of some states which threatened the right and dignity of the individual. These declarations also made it clear that the state should comply with the rule of law. A disturbing trend is that most of these governments do not respect the rule of law. They rather, through the state apparatuses abuse and deny individuals their liberty and freedom. The American Declaration of Independence (1776) provided a platform for a profound thesis on human rights. It states as follows:

*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.*(<http://www.ushistory.org/declaration/document/2007>)

The American constitution stressed equality, liberty and happiness as man's natural rights. Governments are instituted in order to fulfill these objectives. Such government is empowered to abolish such laws when they fail in their social responsibility. This is the essence of democracy. Unfortunately, many of the countries that practise democracy today do not reflect these democratic truisms. Power does not reside in the people but in the government of the day. This is a contradiction of democracy. The American constitution also gave much credence to God as if it is a religious state. Its secular position and especially its aggression on less developed countries contradicts the content of this document. If it is self-evident that men are created equal and, in our view, this is unrealistic, it means



that the founding fathers of this document misconstrued the meaning of equality. Our position is based on the fact that racism is an ugly trait in American social and political environment. Some of these rights are not explicit in terms of citizens and non-citizens. Laws are constantly reviewed and we feel this is not an exception.

In a similar vein, the French declaration of the rights of man and citizens (1789) shows the importance of human rights. It states as follows:

*The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all (<http://www.hrcr.org/docs/frenchdec.html>, 2007).*

The French declaration recognizes the sanctity of human rights. It also stresses equality, freedom and the preservation of the individual in political and social context. We can liken this to the American declaration of independence. The concept of equality has become a regular denominator. The concept is so important that we may begin to look for a new meaning altogether. Equality is a member of the French trinity of liberty and fraternity. They tended to emphasize equality from a theological perspective but, in practice, the notion that all men are created equal needs a second examination. If we are created equal, why do we have different abilities and circumstances?

The French declaration also shows the suppression and violation of the individual which necessitated this declaration. The problem in modern society especially Africa, is that, most governments are products of military dispensation having no regard to the rule of law. This makes human rights far from being an issue of serious concern. The violation of human rights is the cause of crisis, conflicts and in some cases ethnic wars.

The universal declaration of human rights by the United Nations (1948) seems to be a derivation of both the American declaration of (1776) and the French declaration of (1789]. The reason for this position is that, these declarations recognize the dignity and inalienable rights of all members of the human family. This declaration is committed to the foundation of freedom, justice and peace in the world which is the focus of this research. The United Nations universal declaration of human rights covers all aspects of human activities under the sun.

It is also a document covering all member states. But in application one begins to wonder whether some of the member states that are signatories understood what these articles mean. This difficulty stems from the fact that some member states do not have the financial muscle, the social environment, legal framework, and political will towards their implementation. Take for instance, the right to education, employment and social security.

Some of the advanced democracies such as United States, Britain and France can to some extent sustain their implementation but, this cannot be said of African countries. In this continent, we seem to have gone to sleep as far as these rights are concerned. These rights are predicated on developed and sustained legal frameworks, which are lacking in our environment. This calls for urgent attention because in terms of human rights, nobody takes Africa serious. Those who claim to practice them are practicing large-scale dictatorship. What should be done at this stage of our political development? The idea of human rights is quite simple. It

presupposes that human beings have certain rights simply by virtue of being human. These rights are necessary conditions of the good life. Because of their singular importance, individuals are entitled to, indeed required to claim them and society is enjoined to allow them. Other wise, the quality of life is seriously compromised (Ake, 1987). Ake maintains that, the idea of human rights or legal rights in general presupposes a society which is atomized and individualistic, a society of perpetual conflict. It presupposes a society of people conscious of their separateness and their particular interest and anxious to attain them. Such a right is a claim which the individual may make against other members of society and the state and society has obligation to uphold them.

A critical examination of these values embedded in the declaration of human rights shows that they are alien in Africa or that they do not make impact in our environment. We assume that the state is supreme to the individual and therefore, has no interest. We assume harmony not divergence of interest, competition and conflict. That is why we favour a one party state where we have no room for the opposition and this we think make decision making faster. This is not true, for such policy may lack the required articulation and philosophical systemization and analysis.

The Western notion of human right concentrates on peaceful assembly, freedom of speech and thought, fair trial, education, employment and unlawful detention. These rights in our view mean a lot for people who are technologically, socially and politically advanced. Their goal at this period of civilization seems to be self-fulfillment. The opposite of this is the case in Africa and Nigeria in particular. Our problems are rooted in poverty, disease, illiteracy and a brutal struggle for survival. The problem of illiteracy is a set back to our basic understanding of what human rights is all about. People are left with no choice but to swallow whatever policy the government of the day puts in place no matter the pains. Organized protest is discouraged even though the right to stage a peaceful

protest is a fundamental human right. This is unlike Western society where there is a high level of enlightenment on human rights and their violation. Even in western society, the right to a peaceful protest is a fundamental right but sometimes people suffer untold hardship in the exercise of this right.

In Africa, only a few can fight for the rights that society prescribes. These few people who have the resources can go to every length to realize their rights. Their power alone facilitates their result. Such powerful people do not appear in court and, so, equality before the law may not make sense to them. Those who lack the resources to exercise their rights are trampled upon by injustice through the state power. Some die in the process because of their under privileged situation. This is very appalling. What is the way out?

## **HUMAN RIGHT DEVELOPMENT: A DYNAMIC APPROACH**

Human rights as they exist today in most countries are nothing but rhetoric's by governments to score cheap popularity. Although there is a level of compliance by some advanced societies, more needs to be done to actualize the "humanness" which they are aimed at. The situation is worse in Africa and in Nigeria with governments that claim to be democratic. This research is of the view that, a new social framework of human rights ought to be put in place to enhance our developmental drive. In this connection, we would like to focus on the following fundamental rights: (a) The right to education: Education is a vehicle for national development and this is why responsible governments attach much importance to it through effective funding. The past and present governments in Nigeria have not given education the attention it deserves.

Government always claims to lack funds for educational development but a look at other sectors and the level of wastage contradicts this claim. Worst of all, is the commercialization of

education. In as much as we advocate a private sector participation in education, we should not subscribe to government handing over schools to shysters whose interest is profit maximization. This is the current trend in Nigeria. Education as a fundamental right should be accessible to our children at a minimum cost. (b) Right to work: The right to employment is hinged on education.

Our educational system should be creative so that graduates can be self-reliant. Those in employment should earn a living wage for a better living condition. Ake (1978) supported this position when he stated that, for human rights to make sense in Africa, we have to domesticate them, recreate them in the light of African conditions. He further stated that if a bill of rights is to make sense, it must include among others, a right to work and to a living wage, a right to shelter, to health and to education. That is the least we can strive for if we are ever going to have a society which realizes basic human needs (Ake, 1978).

This research is of the opinion that the phase of human rights we are advocating is realizable under a democracy which we claim to practice. What is required is to involve the people in a constructive dialogue to be able to unravel the cause of the dispute. Sharma calls this approach in human rights as comprehensive humanism. As the name implies, it is aimed at a genuine concern in the understanding of the totality of human nature which could provide a sound basis for human rights (Sharma, 1980). Comprehensive humanism explains why respect for life is necessary for claiming the right to live, why respect for property is the pre-condition of the right to possess property, and why respect for the opinion of others is the presupposition of freedom of thought. It further contends that, moral obligations are to be discharged voluntarily by every normal being, because such behavior, being the flow of creative force of the human self, leads to the integrated development

of personality, ultimately, bringing him the highest freedom, the “freedom of mind”. John Dewey calls this, “the basic freedom” (Sharma, 1980). The freedom of mind is a necessary tool in mental revolution.

## CONCLUSION

The violation of human rights in the world is a violation of Justice. This violation affects human happiness in various ways and is responsible for friction, instability terrorism and wars. This study submits that large scale violence which threatens human sufferings can be mitigated through the promotion of human rights, human values and the sustenance of world peace. The perspective of human rights suggested is one that will recognize the right to education, employment, work health and housing. These rights are fundamental to human needs and progress.

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