

Journal Of Policy And Development Studies

ISSN 1597 - 9385

Vol.1 No.2

May, 2007

Published by:

*Department of Business Administration
Enugu State
University of Science and Technology
Enugu Nigeria.*

The State Of Human Rights: Theory And Evidence

By

E. J. C. Duru Ph.D¹

And

Frank .E. O. Ph.D²

Abstract

Saint Paul's epistle in Romans xiii is central to medieval political theory, wherein we are enjoined to obey temporal political authority, which is the vicar of God. To resist this authority, therefore is to resist the ordinance of God. This authority became necessary because men are not true Christians as observed by St Gregory the Great.

Luther and others opened the floodgate for the assertion of human Rights against the Divine King; they contended that human Rights were anterior to Government. Government was to ensure its enjoyment and not restrict it.

Secondly, it was averred that God's ordinances were just ordinances. But when Kings become unjust with their rule, then the people should not only resist, but seek the removal of such a King, as unjust orders are evil. Just as God resisted the devil, man must resist unjust Kingly laws. The spin-off here set in motion the agitations for the human rights, against the authority of Government or the Divine King. These Rights are often infringed upon by the state led by despots, therefore must be oppose. The problem however is how to secure justice in Government's court in cases where the Government is an interest party. The duty for the civil Rights communities is therefore to be vigilant against the state, as civil rights are the easiest thing to be forgotten by the Government. This explains why in some states they are engraved in the supreme document, the constitution. Rights invoke duties and duties demand performance, this is the logic of civic equation. Rights are those conditions of social life without which no man can seek, in general to be himself at his best (Laski, 1968:91).

Introduction

Obviously, most political systems even in recent times have become increasingly repressive of civil rights of its members. For example, in the United States, recently the government has been eavesdropping on the individual privacy, in the name of fighting the war on terror. This is an infringement on human rights. Whatever is the rationale for this act of increasing despotism, the fact remains, that the State is an outcrop of the civil rights of the people. It is a fact that Saint Paul in Romans xiii enjoined all to accept the temporal authority, as it represented God in 'civita tērna' (earth). It is also true that he enjoined all who want to be free from the terror of the ruler, to do what is right. However he did not advocate at what point our rights are infringed upon by the ruler. Perhaps, as God cannot do any wrong and similarly so, would his vicar on earth. But must we continue allowing our rights to be infringed, for peace to abound?

In this paper, we posit that the people reserve the inalienable Rights to rise against any state, which no longer satisfies its purposes for existence what are the purposes of the state and how is the state satisfying these? What constitute the rights of the people and how can it be insured against tyranny? These constitute the statements of the problems in this essay. The focus of this paper is therefore to evaluate these questions in relation to the modern political systems.

1. Head, Dept. of Pol. Sc. University of Calabar

2. Lecturer, Dept. Pol. Sc. Benson Idhosa Univ. Edo State

The methodological orientation of this paper is the dialectical historical approach which rest on the interplay of the past, present and the future. Put differently, it would examine medieval political theory on the issues raised herein, contemporary political philosophy and prognosticate, the future or the synthesis. This methodology would enable the issues raised herein to be placed on a continuum for analytical inferences.

The State And Rights: Medieval Perspectives

The theory of the state is one of a consuming passion, by mainly social contract theorists. These ranges from the **social Contract** theories of Hobbes, Locke and Rousseau – where the state emerged out of the contract among men in liberty, to assuage the inconveniences of unlimited liberty on the others. It is this contract that gave rise to the institution of the state, empires and/or governments.

It is instructive to note that man in the state of nature had unlimited rights. These rights competed with those of others, and then acceded to a third party, to arbitrate i.e. government. Human rights therefore preceded the state. This, however, did not obliterate the contract, among men which is sovereign.

The second explanatory paradigm is the '**divine rights of kings**'. This enjoined the subject to the kings to give unconditional obedience to his authority for he represents God in the circular world, as long as he is virtuous. Interestingly, a virtuous king is part of the gods and is entitled to cooperation and obedience; but the king who is otherwise is part of the demons. Therefore he may be deposed and even slain (Appadorai, 1968:31).

The other models are the 'Force, Patriarchal and Matriarchal' all of which alluded to the emergence of man on the scene. Because of his gregarious instinct, Aristotle described 'man as a political animal' he lives in a community with his unlimited rights, in the state. The elasticity of these rights, created problems of adjudications, he then entered into the second contract to have the Government to regulate the interplay of these rights.

The sixth perspective is the Evolutionary one which contends that the state emerged from a series of muddling through processes, at every state of the process, it improves on itself. This perspective however recognized the anterior fact that man preceded the state in the evolutionary processes. Similarly, man himself evolved through series of processes, from the primitive 'apelike' creature to the present, through the processes of refinement.

The distillation of these theories leaves the following residues;

- (i) Man is anterior to the state, with all the natural rights;
- (ii) That the state is an agent of the community. The community operates with two contracts viz; that which created the community and the other which created the Government and its appurtenances for the protection of everyman's rights.
- (iii) There should be no deprivation of one's Rights without his consent;
- (iv) The trust on the Government derives from the second contract; which could be withdrawn if it acts contrary to the trust reposed in it;
- (v) Governmental rights is limited to the terms of the contract;
- (vi) Referendum is the means to the general order.

The critical issue therefore is, whether the Government created by man 'legibus solutus' above man and the law?

Infringement On Civil Rights

This issue then is, can the Government which is the creation of the people, infringe on their rights? One group of opinion asserts that the most essential prerequisites for the enhancement of human welfare in the society, is to guarantee the presence of law and order. Therefore, when this has been done, then man would realize the full potential of his rights. Towards this end, the government may have to trample on the rights of its creator insofar as, it is to enhance other's enjoyment of their rights.

Another school of thought contends that the ultimate value of an individual is liberty. If liberty does not exist for the individual, it does not exist at all. This is the position of the human rights community. This explicates their positions, whenever the state is adjudged to have trampled on the rights of the people. It is the opinion of this discuss, that unlimited enjoyment of rights is injurious to the society. It would return man to Hobbessian state i.e. state of anarchy. There must be a delicate balance between the state and the exercise of civil rights.

Civil Rights And The Government

The issue therefore becomes how to protect the rights of the individual from infringement by the Government. The liberty group submits that since the individual rights are anterior to Government, the Government must be subject to the control of the people. This is to ensure against the trampling on the rights of its owners. The form of arrangement necessary to achieve this is democracy. It is therefore a misnomer for a Democratic government to violet the rights of the people (citizens) with impunity. That government risks being recalled by the people, through dissolution via the ballot box (Election).

Democracy And Civil Rights

Democracy in this context is said to be the best form of government, for it would continually guarantee the ability of the governed to regulate the government on the management of the formers rights. Where the management of the rights is considered ineffective, the government receives a vote of no confidence and a fresh election is called to form a new Government. **It is the process where political rights and power to influence decisions on social policy are progressively extended to all groups in the population** who have rights in the state. (Downs, 1957:275).

Civic Equation

Rights are inalienable privileges recognized by the State. There are claims recognized by the state and enforced by it. Civil rights movement strives to draw attention of the states to rights, which demand recognition by the law. These are rights in which the State chooses not to recognize and/or trampled upon.

The civil rights equation is that, Rights begat duties. Protection from attack by the 'strong' imposes a duty on you (the strong) not to attack the weak or others likewise. Rights therefore correlate to functions, which one is obligated to perform. No claim to right exists without a cost i.e. paying for it. Here lies the onus of rights and obligation on both the government and the governed.

Suppression And The Question Of Rights

Governments infringe on the civil rights of the people because oftentimes, the operators of government are those who have been socialized in the colonial context. The operation of government known to them was that of suppression of dissenting opinions and forcing their programs through.

The quest for the observation of civil rights started with the postulations of Aeneas Sylvius in 1446, later to be known as Pope Pius II, when he posited that the emperor is 'Legibus solutus' that is, not subject to the law. He was expanding the treaties of Saint Paul in Romans xiii, explicated to mean, 'Political authority is derived from God, because it exists for the maintenance of justice (Carlyle and Carlyle n.d 271). Melanchoton and Burgenham had signed a declaration that Romans xiii was indeed an ordinance of God, but only a just power, unjust violence is not God's ordinance, and should be resisted. Melanchoton and Burgenham were therefore the classical fathers of the civil Rights movements, because to them, just as God resisted Satan, man must resist unjust law which infringes on his rights by the agent he so

instituted as an arbitrator between the exercise of his rights and that of his fellow man. Like Socrates, this position caused them their freedom and eventually their lives by Emperor Nero.

Luther's perspective is that 'Temporal ruler must always be obeyed, except in spiritual matters, as holding the authority of God', that the king or Lord sworn to his subject to reign according to definite conditions and that, if he violated these, he forfeited his authority. He then advanced the practice of swearing by the King to uphold the rule of the people. He concluded that his practice recognized the rights of resistance in certain cases of obvious injustices. Luther's position was derived from Melancthon and Burgenham the classical fathers of civil rights movements. These set the tone for the agitation for more and better civil rights, which Harold Laski classified into:

- (i) Private Rights - the choice of **religion** and **security**
- (ii) Political Rights -
 - the right to partake in the affair of the state;
 - to vote and be voted for;
 - of speech
 - freedom of association
- (iii) Economic Rights -
 - right to work
 - to earn reasonable income
 - to a reasonable hour of work (Laski, 1980).

The Praxis Of Civil Rights

The practice of the management of civil rights is problematic in most States; this explains why some states code civil rights in the supreme document – the constitution, obviously an attempt to avoid abuse by the state. It is easier to attack the executive in terms of a law it has clearly offended. Written enactment serves to remind the people that it has got to fight for its rights (Laski 1968:104). In spite of these, there has been flagrant violations of the civil rights by the government.

It is instructive to remind governments, that the suppression of rights has been the cause of the greatest mass uprisings against governments the world over. Before and after the French Revolution, abuse of civil rights has generated more revolutions than any other reason, in medieval and modern times. Any Government, whose passion is the denial of rights, could be said to be carrying a time bomb in its bosom.

It would amount to trusting the government too much, if the confidence exists that the government would on its own observe civil rights of the people. This is because more often than not, government does degenerate into personal fiefdom – dictatorship.

On the other hand, the civil rights community must constantly be on the look-out for infringements, and bring same to the attention of the government. All attempts must be made to obtain redresses in the most civilized manner; otherwise the government would assume that no such rights exist in the first place, hence it is reparative to sensitize the people on their rights. Secondly, attempts must be made to codify these rights into law as in the advanced societies, as well as publicize them adequately.

Thirdly, the Judiciary must be made to be independent of the government, so as to be able to arbitrate impartially in matters in which the state is an interested party. Finally, democracy must be instituted and enforced as a guarantee against infringement of these civil rights.

Problems Of Rights

It has been suggested in this discuss that the enactment of rights into law is a major wedge against its violation by the state. The realization of this rests on the principles of separation of power as advanced by both John Locke and Montesquieu. They had presumed that it was the secret to the freedom of ensuring non-violation of rights by the state, but recent development even in so-called democratic state including Nigeria have proven them wrong.

First of all, since the State has right over me, it equally has the right to exact from me that conduct which secures for others the enjoyment of their rights, as it does to me. How is this ensured equally, when the others have access to Government as in the days of the aristocracy in England?

The second problem however is, since the judiciary is ultimately appointed by the executive, its independence is rarely guaranteed, especially in cases against the state. For it is said, he who plays the piper, dictates the tune. Compromised judgments could emanate from the Judiciary, which is paid and appointed by the state. This is the paradox.

Conclusion

In this exposition of the state and human rights, it has been asserted that man has inalienable rights, the exercise of these privileges in relations to others without an arbitrator conduced to the Hobbessian state. The avoidance of these led to the creation of the Government. The Government seeing itself as '**legibus solutus**' more often trample on these rights which are anterior to its existence. This takes place when it is incrementally becoming dictatorial. A state of messianic complex.

The option available for the civil rights community is to continuously sensitize the people of their rights, consolidate the rights by law, institutionalize democracy, imbue the citizens with democratic tenets and most of all advocates for the independence of the judiciary – to enhance fair arbitration in cases between the state and the citizens.

Government should however know that most revolutions the world over have been orchestrated more by the denial of the human rights both in medieval and/or modern times. The dilemma of ensuring the freedom of the judiciary in matters, between the state and the people remains the predicament, solve this and rights would be assured. The importance of the observance of civil rights cannot be overemphasized; hence the United Nations Organization has opined that the UN Human Rights Commission is one of its most important organs. This is so because wars whether in Bosnia, Rwanda, Darfur-Sudan, Somalia, Ethiopia are all caused by its abuse. Every government which respects human rights is often not under the threat of the people's revolt.

References

- Appadorai, A. (1968). *The Substance of Politics*. India: Oxford University Press
- Carlyle, R. WE. And Carlyle, A. J. (n..d). *A History of Medieval political Theory in the West – Political Theory from 1300 – 1600 Vol. VI: Edinburg & London – MCMLXX.*
- Downs, A. (1957). *An Economic Theory of Democracy*. London: Harper and Row.
- Duru, E. J. C. (2005). Due Process Principle and Dividends of Democracy in Nigeria
A.J.I.P.D.A Vol. 1; No.1 July/Dec., 2005.
- Laski, H. (1980). *A Grammar of Politics*. London: George Allen & Unwin.
- Hobsbawn, E. J. (1975). *The Age of Revolution Europe 1789-1848*. London Weidenfield & Nicolson.