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The Fiction of Natural Rights

Dyer D. Lum

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The very corner-stone of Anarchistic philosophy is often supposed to be a paraphrase of Herbert Spencer's "First Principle" of equal freedom, that: "Every person has a natural right to do what he wills, provided that in the doing thereof he infringes not the equal rights of any other person." Yet there lurks in the expression a fallacy that correct thought must repudiate, or we must carry with us a diagram explaining the meaning of the words we use.

What are "*natural* rights?" In the middle ages school-men believed that they had solved a problem in physics by asserting that "nature abhors a vacuum"; but a very little study sufficed to convince thinkers that "the web of events" we group as "nature" neither abhors nor likes. With the growth of the conception of law as a term descriptive of a mode of being rather than a fiat imposed upon events, the term "natural" has lost much of its old teleological meaning. Still it is often used in that sense and too often implies it.

Blackstone defined "the law of nature" as "the will of man's maker." Mackintosh calls it "a supreme, invariable and uncontrollable rule of conduct to all men." Sir Henry Maine also speaks of "a determinable law of nature" for the guidance of

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human conduct. Kent defines it as that “which the creator has prescribed to man.” F. Q. Stuart, in his “Natural Rights,” says expressly: “A natural right is a privilege vouchsafed by natural law to man to exercise his faculties,” and his whole work teems with expressions implying the fixity of “real law.”

The correct position is, I maintain, that what we term “natural rights” are *evolved*, not conferred, and if so they are not fixed and unalterable. Nature conferred no more “privilege” upon us than upon dogs to exercise our faculties or functions. In fact, to my mind, the very assumption of “natural rights” is at war with evolution. Even if we no longer personalize nature as their giver, the term still carries with it the implication of rigidity, when, in fact, not even that mythical “right reason” with which we are supposed to be endowed can prove them historically so characterized. Every man is supposed to have a “natural right” to life. Is this co-eternal with man? Did it exist, though unrecognized, among our prognathus ancestors? If the savage transcended “natural right” in disposing at will of the life of a captive, where was it inscribed? It was not incarnated in the semi-brute. If the Roman law was based upon “a type of perfect law” in nature, was the recognition of the “natural right” of a father over the lives of his family contrary to the “right reason” of the time? And to this query convictions founded upon nineteenth century convictions are not pertinent.

Is woman’s “natural right” as a “person” the same in all countries under polyandry, polygamy, and monogamy? or are those relations of the sexes, so important to the “well-being and good conduct,” ignored by beneficent nature? It has been conclusively shown by sociologist that human progress (and there is no other) consists in passing from the militant *régime* toward an industrial one. Yet the time was when the *lex talionis* sanctified revenge as the highest virtue. Time was when not a human being on the face of the earth differed from Aristotle’s opinion of slavery as a natural condition. Where was this “privilege vouchsafed by natural law” then inscribed? The ques-

tion whether society would not have been far more conducive to happiness if such right had been recognized, is as idle as whether eyes behind our heads would not have been equally so. If the “Principle” was not discoverable then, but has been now, are we to conclude that it is the final synthesis of “right reason”? or that its Incarnation is only now visible?

Having thus shown a few of the queries which arise to puzzle one who seeks for evidence of the immutability of “natural rights,” let us examine closer into the nature of “rights” themselves. The human sphere is a province conquered from nature, and believe its relations cannot be termed “natural.” It would be equally as permissible to call them moral or religious, for the qualifying adjective being given to imply the highest validity, it would be so understood by all to whom either of these words conveyed such meaning. Equally permissible, but equally indefensible in evolutionary thought when implying fixity. But do there exist any such inherent predicates of *human* nature as “rights?” The same theological bias which characterized “rights” as “natural” also regards their assertion as positive. On the contrary, every assertion of a right purely human, paradoxical as it may seem, is negative. The assertion of a “right” is but a protest against iniquitous conditions. Social evolution ever tends to the equalization of the exercise of our faculties. That is, social intercourse has slowly evolved the Ideal that peace, happiness and security are best attained by equal freedom to each and all; consequently, I can lay no claim in equity to a privilege, for that which all alike may enjoy ceases to be privileged. The important deduction from social evolution is that as militancy has weakened and industrialism widened its boundaries, liberty has ever tended toward such equalization, Privilege finds sanction in equity as right, because it violates the ideal of social progress — equality of opportunities.

Therefore it is that, as social relations have become more complex and integrated, the Ideal of “a more perfect form of liberty” rises in the form of protest against what only then are

discernible as socially wrong, though ostensibly as assertions, such as “rights of women,” “rights of labor,” “rights” of children and sailors against flogging, the right to the soil, etc. They are fierce and burning assertions just so far as they emphasize a growing protest against inequitable conditions. In this sense they are Anarchistic, inasmuch as only by the extension, in other words, the abolition of restrictions, is the wrong righted. Our specific “rights” are thus dependent upon our ability to discern wrongs, or the violation of the ever-evolving industrial ideal – equality of opportunities, and exist but as protests. Abolish vested wrongs, and there will be no vested rights, natural or otherwise. Precisely as water flows to a level when obstructions are removed, just so will social relations flow to equitable conditions when restrictions are swept away. And precisely also as liberty comes in does the assertion of “rights” go out.