

Communitarian Understanding of Human Rights as a Basis for the Pursuit of Human Well-Being

By

Precious Uwaezuoke Obioha

Akwa Ibom State University, Obio Akpa

Abstract

Human rights are certain moral guarantees that rest on the belief that all humans possess the same rights and that they are immutable and inalienable. Fundamentally, these rights can be conceived as legal, political and moral claims to conditions necessary for the well-being of individuals. However, how best should the concept of human rights be understood and applied for the achievement of human well-being? This paper, through the expository and critical methods, states that as much as a proscriptive understanding of human rights is good, a prescriptive or a communitarian perspective to human rights is more fundamental and more robust for the pursuit of human well-being. The central argument in this perspective is that what the state or the community can do for its citizens (positive rights) are no less important if not more important than what cannot be done to its citizens (negative rights). The paper recommends the communitarian idea of human rights as a basis for human well-being.

Introduction

The recognition of the existence of human rights, that is the fact that humans are entitled to some rights, is not debatable and as it were not problematic; what has been problematic is the internationalization and universalization of the idea of human rights. The idea of human rights is as old as man because it is an extension of the natural law doctrine which is the basis for natural rights. It is noted here that what the ancient philosophers called natural rights; the modern philosophers prefer to call human rights. This shows that the two terms, natural rights and human rights have the same meaning and are from the same source, i.e. natural law deduced from human nature.

The antiquity of human rights is not debatable because the reasons people defended themselves against intruders and external aggressors in the state of nature was because of the acknowledgement of certain fundamental rights which they, as human persons, possess and which must not be violated. Any attempt therefore to violate such rights attracts reactions and retaliations which are actions registered in search for justice and redress done or attempted to be done. Life in the state of nature could therefore be precarious, nasty and short because after all no one has the monopoly of violence and self-defense is the first law of nature.

Dissatisfied with the outcome and the implications of these to social cohesion, men came together (and the civil society was born) on rational grounds to relinquish certain of their rights to the Sovereign, the State or the General Will for the protection,

preservation and the management of the rights so surrendered or if you like for the proscription and prescription of their rights. Locke and Rousseau explained.

Since some men violated the rights of others, the want of a common judge led men by mutual agreement to a social contract, to join together into a civil society. Men therefore create and empower the state to better protect and more securely enjoy their freedom, rights and equality through the enactment and enforcement of civil law (Locke and Rousseau, 1971, 183).

The idea of the civil society in connection with human rights thus translates the idea of rights from morality occasioned by the natural law to positive laws protected and enforced by the State/community. The State therefore is a major player in the full realization of the idea of human rights as not only a protector of human rights but also and more fundamentally a provider of the opportunities and the provisions for the full realization of human personality and well-being. The place of human rights, its acknowledgement, provision and respect, in the overall realization of human well-being cannot be over emphasized. However, discussions on the subject of human rights have always centered on one dimensional (and thus inadequate) understanding of human rights which is the proscriptive idea of human rights. Proscriptive understanding of human rights views human rights more in negative (freedom from) than positive (rights to/freedom to) terms. Negative understanding of rights favours the abstention over the intervention of government in the pursuit of human dignity and well-being.

This paper therefore seeks to shift the ongoing focus on human rights discourse which considers human rights more from a proscriptive sense to getting the discourse on human rights to focus more on its prescriptive/communitarian sense which will serve as a basis for the pursuit of human well-being. On the basis and authority of the social contract between the citizens and their State, the citizens can validly lay claim on their State both for negative and positive rights. The thesis of this paper therefore, is that as much as the proscriptive idea of rights is good, better is the communitarian idea of human rights in the pursuit of human well-being. To convincingly argue the following thesis and to solve the above identified problem, the paper adopts profusely the expository, analytic and the critical methods of a philosophical research. By exposition, the paper lays bare and restates the thesis of proscriptive and prescriptive idea of human rights and by analysis, the paper undertakes a conceptual clarification of terms involved in these ideas by clearing linguistic cobwebs to enhance proper understanding. Critically, the paper assesses the thesis and the provisions of both ideas of human rights.

Understanding Human Rights

There is no widespread acceptance of what constitutes human rights on the basis of the disagreement as to whether it should be viewed as divine, moral or legal entitlement; or whether it should be validated by intuition, culture, custom, social contract, principles of distributive justice or as pre-requisite for happiness; or whether they are to be understood as irrevocable or partially revocable (Waldron, 1984; Otoabasi, 2015).

This disagreement notwithstanding does not vitiate the importance attached to human rights the world over. The recognition of its existence is more fundamental than the disagreement as regards its scope. The United Nations Universal Declaration of

Human Rights (1948) states that the foundation of freedom, justice and peace in the world is the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family (quoted in Omoregbe, 1997). The declaration further notes that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. It further hopes that the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want is dependent on the proclamation of this highest aspiration of the common peoples which is the human right charter. To this end therefore, the Declaration proclaims that the peoples of the United Nations have in this charter reaffirmed their faith in the fundamental human rights, in the dignity and worth of the person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Be that as it may, certain postulates have been offered and widely accepted as defining human rights. James Nickel has defined human rights as;

Basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. Calling these guarantees 'rights' suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and care available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.

Henry Shue (1983) identifies three basic rights which involve 'everyone's minimum reasonable demands upon the rest of humanity and that the enjoyment of them is essential to the enjoyment of all other rights'. According to Shue, these basic rights include physical security, economic security or subsistence (what is needed for a decent chance at a reasonably healthy and active life of more or less normal length, barring tragic interventions), and liberty of economic and political participation. Arising from these basic rights are three duties which are: to avoid defining, to protect from definition and to aid the defined. Thinking in the same vein, Amartya Sen recognizes the duty component of rights, according to him, rights are entitlements that require correlated duties. If person A has a right to some X, then there has to be some agency, say B that has a duty to provide A with X. If no such duty is recognized, then the alleged right, in this view, cannot but be hollow (Sen, 2000: 229). To this end, human rights are things which every human being can rightly claim as an entitlement and that these rights are fundamental and sacrosanct such that the sovereign or the parliament itself is bound not to infringe upon it. Kofi Quanshiga (1992:234) writes:

Human right is conceptualized as the new manifestation of the natural law concept of the Ancient and Middle ages. Natural law had always envisaged the external law conceived as principles of a right law or is conceived as principles of a right law or is patently correct solution of concrete legal questions. It is the law which the monarch or parliament itself is bound not to infringe

Otoabasi also discusses the five postulates on human rights identified in Encyclopedia Britannica (2002: 658). Firstly, human rights are understood to stand for both individual and group demands for political power, wealth, education, and other social goods and benefits, the most fundamental of which is respect and its constituent elements of reciprocal tolerance and mutual forbearance in the pursuit of all other goods. In this understanding, human rights imply claims against persons and institutions that impede the achievement of these goods, as well as standards for judging the legitimacy of laws and traditions.

The second postulate is that human rights are normally alleged to refer, in some vague sense to 'fundamental' as distinct from 'non-essential' goods or benefits. The fundamental here will refer only to sensitive rights like of life or the right to equal freedom of opportunity while the non-essentials would mean 'mere wants'.

The third postulate, in recognition of the diverse environmental circumstances, differing worldviews, and inescapable interdependencies between goods and benefits, takes human rights to refer to a wide continuum of claims, beginning from the most justiciable to the most aspirational.

The fourth postulate recognizes that human rights have limitations such that the rights of any particular individual or group in any particular instance are restricted as much as is necessary in order to secure the comparative rights of others and the aggregate common interest. On this note therefore, it makes little or no sense to think of human rights in absolute terms.

Finally, human rights are understood to be quintessentially universal in character, in some equally the innate possession of mankind every where, including in certain instances even the unborn. This implies that, at least in theory, human rights extend to every person on earth regardless of creed or race. In single terms, for being a human being, the human member of the earth is entitled to rights. Corroborating this, Omoregbe (1987: 20) writes that;

Rights whether it is in the legal or moral sense of the word is a justifiable claim to have or to obtain anything to which one is entitled or a justifiable claim to act in a particular manner if one is entitled to do so.

Apart from the above definitions and conceptions of human rights, efforts have also been made to categorize human rights under three generations. This categorization was advanced by the French Jurist, Karel Vasak (see Encyclopedia Britannica, 2002: 658). The first generation corresponds to civil and political rights; the second generation deals with economic and social rights while the third generation talks about collective or solidarity rights.

The first generation of human rights deals essentially with liberty, and participation in political life. They are fundamentally civil and political in nature and serve to protect the individual from the excesses of the State. First generation rights include among others freedom of speech, the right to fair trial, freedom of religion and voting rights. It was pioneered by the United State Bills of Rights and in France by the Declaration of the rights of man and of the citizen in the 18th century. At the global level, they were first enshrined by the 1948 Universal Declaration of Human Rights and given status in international law in Article 3 – 21 of the Universal Declaration and the International Convention on Civil and Political Rights. The first generation of rights

views human rights more in negative (freedom from) than positive (rights to/freedom to) terms. Negative understanding of rights favours the abstention over the intervention of government in the pursuit of human dignity and well-being.

The second generation of human rights is traced to the socialist tradition of Saint-Simon in the early 19th century (Shue, 1983: 30). The ideals of this conception of human rights were later promoted by revolutionary struggles and welfare movements across the world. This generation of rights is related to equality and was first recognized by governments after World War I. These rights are fundamentally social, economic and cultural in nature. They ensure different members of the citizenry equal condition and treatment. These rights include the right to work, the right to just condition of work, the right to fair remuneration, the right to an adequate standard of living, the right to organize, form and join trade union, the right to collective bargaining, the right to equal pay for equal work, the right to housing and health care, the right to social security. Others are the right to education, the right to property and the right to enjoy the benefits of one's own creative activity. These rights are covered by the Universal Declaration of Human Rights and are also embodied in Articles 26 – 29 of the Universal Declaration and the International Covenant on Economic, Social and Cultural Right. In the second generation of rights, human rights are conceived more in positive than in negative terms. Also, it requires more the intervention than the abstention of the State in order to distribute goods and benefits equitably.

The third generation of human rights are those rights that go beyond the mere civil and social as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration of the United Nation Conference on the Human Environment and Development and other pieces of generally inspirational 'soft law. The third generation rights are largely unofficial and include such rights as: group and collective rights, right to natural resources, right to participation in cultural heritage, right to intergenerational equity and sustainability and the right to commutate and communication rights.

In all these definitions, conceptions and postulations on human rights, one recurrent decimal is the recognition of the sanctity of human life and the dignity of the human person. This being the case, the achievement of human well-being is guaranteed if these rights are respected and protected.

Communitarian Idea of Human Rights

To appreciate the meaning of a communitarian idea of human right requires that we first understand what communitarianism (from an African perspective) means so that the concept of human rights can then be situated within this philosophy.

According to Gyekye (1987: 155) 'communalism or communitarianism (Gyekye uses the two terms to mean the same thing) may be defined as the doctrine that the group (that is, the society) constitutes the focus of the activities of the individual members of the society. He further states that the doctrine places emphasis on the activity and success of the wider society rather than, though not necessarily at the expense of, or to the detriment of the individual'. Communitarianism as a philosophy is founded on the values of social well-being, solidarity, interdependence, cooperation, care, concern and reciprocal obligations. These values are sure foundation for human well-being since no single individual is self-sufficient to meet the essentialities of his personality. According

to Egbeke Aja, African communalism is the existential life of the traditional African which is founded on the belief that all human beings are members of one family of human kind; it is the traditional concern for persons and their well-being. It presupposes that while the family is the unit of an African community, everyone in that community is his brother's or sister's keeper. The kingship system is "the theoretical basis in terms of institutions such as the clan, underlying the initial equality of all and the responsibility of many for one. Given this understanding, the well-being of an individual is every body's concern.

Human well-being here is understood as a state of wellness; a state where the individual person has the ability, capabilities and the opportunities to lead a meaningful life and not necessarily a life devoid of challenges. Challenges notwithstanding, human well-being bespeaks of the availability of necessities, capabilities, opportunities, helps and motivations the individual can access to overcome the challenges and thus lead a happy and fulfilled life.

Human life is characterized by adventures, ambitions, dreams, desires and aspirations. This is a truism. But of no less truth is that human life is equally characterized by weaknesses, frustrations, hindrances, limitations and failures. However, these limitation and frustrations are overcomable when and if a person receives the necessary motivations, care and helps. Human beings need help: help of fellow humans and the help of his/her community to help him/her overcome challenges of life and set him/her on the right path of progress.

The essence of the civil society is not only to protect the rights which men enjoyed in the state of nature, but to also provide opportunities that will help him/her enjoy his/her (inalienable) rights/freedoms. The community/State is a provider of opportunities.

Communitarian idea of human rights recognizes a symbiotic relationship between the individual and the community/State. It avers that the community/State and the individual are partners in progress and that the well-being of the State depends on the individual(s) and vice versa. Communitarian idea of human right transcends an individually structured rights to a communal understanding of rights that recognizes reciprocal obligations not only among citizens but also between the citizen(s) and the State. Talk about rights is meaningless outside the communal setting. This is because my claim to possess certain rights presupposes the recognition of someone who should respect that claim. However, these rights are not only proscriptive in nature but equally prescriptive. Proscriptive rights or freedom are ideally issues that are forbidden. They refer to those things that the government cannot do to groups, such as discrimination based on race, ethnicity or gender. These rights are called negative rights because they involve what cannot be done (legally) (Rourke, 2005: 453) to individuals.

But individuals or citizens can lay claim not only to negative rights but also to positive rights or what is called prescriptive rights. Prescriptive rights are the basic necessities that a society and its government are prescribed, that is, obligated to provide so as to assure certain qualitative standards of life for everyone in the community. These include adequate education, nutrition, housing, sanitation, healthcare, and other basic necessities to live with dignity and security and be a resourceful citizen (Otoabasi, 2015:9). They are also called positive rights because they place a positive obligation on societies and their government to ensure they are met (Rourke, 2005:453).

Whereas in proscriptive or negative rights, its advocates tend to conceive of human rights as being mere individuals or veritable “islands unto themselves”, advocates of prescriptive/positive or what is here called communitarian idea of rights are far more willing to recognize the importance of the community or the State in individual’s lives. Whereas proscriptive idea of right is steeped in individualism, prescriptive idea of rights is steeped in communitarianism.

The community or the State therefore, should not only be seen not to interfere with people’s inalienable right/freedoms but should also be seen to intervene in the people’s lives in order to distribute goods and benefits. This is an integral view of human rights/freedom which communitarianism offers. It recognizes rights/freedom-from and also right/freedom-to. Negatively, it involves not interfering with people’s freedoms/rights and positively it involves intervening and positively providing the necessities, the ways and means and the concrete helps through which the person can adequately realize his full potentialities and personality (Obioha, 2016: 254). Amartya Sen (1999) calls it instrumental freedom or capabilities or substantive freedom and Iroegbu (2002) calls it substantive liberty. The UNESCO Committee on human rights also recognizes this sense of human rights when it perceives it as:

A condition of living without which in any given historical stage of a society, men cannot give the best of themselves as active members of the community because they are deprived of the means to fulfill themselves as human beings. By liberty they mean more than only the organization of the social and economic conditions within which men can participate to a maximum as active members and contribute to the welfare of the community at the highest level permitted by the material development of the society (Ndubuisi, 2007:185).

Sen observes, and rightly so, that man is not sufficient in nature and therefore positive actions are required from the State or his community to provide the necessities that will set him on the path of progress. So for Sen, substantive freedom, which he also calls capabilities, constitutes instrumental freedoms which include political freedoms, economic facilities, social opportunities, transparency guarantees and protective security. The substantive rights of Sen is the totality of what makes the human person to exist, fully blossom and finally achieve his ultimate and to be happy. It is a fact there are things individuals cannot do for themselves in their quest for a happy life. There exist conditions over which individuals may have no control and thus public actions are required in such areas to enable the individuals overcome or cope with what as individuals they would be unable to overcome. For example one’s life goals may be affected by the age of the person (e.g. by the specific needs of the old and the very young), by gender and social roles (eg. Through special responsibilities of maternity and also custom-determined family obligations), by location (eg. By proneness to flooding or drought, or by insecurity and violence in some inner city living), by epidemiological atmosphere (eg. Through diseases endemic in region) and by other conditions over which a person may have no or only limited control.

So the state or the community is expected to provide the capabilities through practical policy making that will enable individuals overcome certain limitations in their quest for well-being. Therefore the issue of human rights/freedom goes beyond its

proscriptive sense to mean a reality that makes the realization of the persons fullest being possible. It involves laws, infrastructures, social and financial arrangements and constitutional provision that order the society justly for the full personhood of all. It concretely ensures the realization of a person's being by removing all restrictions and by ensuring the provision of all capabilities necessary for the human personal dignity and well-being.

The Universal Declaration of Human Rights (UNDHR) as ratified by the General Assembly of the United Nations captures this prescriptive/positive or communitarian idea of rights in its article 25 which recognizes and accords the human person a right to an adequate standard of living and that this right is fundamental to man. The UNDHR is further supplemented by such documents as the European Convention for the protection of human rights and fundamental freedom (1953) and the International Covenant on economic, social and cultural right (1966).

Also very fundamental to human well-being is the recognition to participate in community life. It involves the concretization of the common life of a people in daily experience. It encourages mutual co-existence that promotes both the individual and communal good. Communitarian idea of rights promotes the development of individual's potentialities and personality by ensuring the provision of the necessary opportunities, rights and avenues to lead a dignified life for instance, when a person has gone to school and possesses the requisite skills and knowledge, the person should be gainfully employed. Nobody should be denied the liberty because of who he/she knows or does not know or because of where he/she comes from. The denial of the liberty brings about frustration, bitterness, anguish and disenchantment in society. It causes alienation both from oneself and from the community. It kills dreams, hopes and aspirations. And when these are dead, then one's pursuit of dignity, self-worth and self (human) development will be farfetched.

In the same vein communitarian idea of rights speaks of the ability to get the material means to live one's life fully as a person. For instance, in Nigeria, it is said that education is the right of every child or everybody. However, no real provision is made for the exercise of that right. If I have the right to go to school but cannot in reality exercise that right for the fact that the cost of going to school is high and I cannot afford it and worse still the community or the government has not made any provision for me in terms of accessing the necessary funds to exercise that right, then the right is as good as being empty and useless. A prescriptive or communitarian idea of rights ensures that rights are not empty in this sense but that adequate provisions are made to enable people have a decent, good and happy life.

Conclusion

Human rights are those rights attached to human beings which function as moral guarantees in support of claims towards the enjoyment of a minimally good life. Hence, it has been argued that to advance human well-being, rights should not be limited to proscriptive rights; that as much as proscriptive rights are necessary, it is argued that an understanding of rights from its prescriptive or communitarian sense is much more necessary for advancing human well-being. Every government is therefore called to cultivate the human right culture (especially the communitarian sense) to enable its

citizens live a more humane and dignified life. Living under the influence of this sense of human rights helps people attain self-actualization in terms of living an authentic life.

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