Marcin MERKWA[1]
Milan SUDZINA[2]

HUMAN RIGHTS AND THE IDEA
OF NATURAL RIGHTS

Based on the findings of other publications, this paper attempts to assess whether the ideas of natural rights and human rights can be understood as identical. The first part of the paper outlines, from a historical perspective, the idea of natural rights; the second part presents elements of the conception of human rights. The third part sets out arguments against considering these two ideas as equivalent. The assumption that a better understanding of the conception of human rights can be obtained by demonstrating its relationship with other ideas will contribute to achieving the objective.

Keywords: natural rights, human rights.

1. INTRODUCTION

It is difficult to point to a conception that has been as popular as the idea of human rights since the second half of the 20th century. I mentioned *popular* on purpose, as the assumption that an individual is entitled to certain rights due to the fact that he or she is a human being is not merely a moral postulate, which has significantly influenced contemporary legal systems. It is also, or perhaps above all, a conception which, without undue exaggeration, has become part of modern culture or even pop culture. The very conception, being separated from strictly legal considerations, has become an argument for changing existing social relations. This may not be surprising, if we consider, for example, the fact that the sources of the modern conception of human rights (by *modern* I mean the second half of the 20th century) are not merely more or less vague philosophical ideas, not only the experience of wars and totalitarianisms, but also transformations taking place in Western societies, which both shaped and were shaped by the central tenets of the conception of human rights, that is to say, mainly by the postulate of equality. However, it must be noted that the consequence of the role the idea of human rights plays nowadays is, among other things, a kind of "dilution" of the concept of an individual's inalienable rights, or even an expansion of the list of rights that are referred to as human rights. Accordingly, an in-depth analysis of the idea of human rights seems to be necessary, however, it cannot

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[1] Marcin Merkwa, University of Rzeszow, Poland; e-mail: mmerkwa@ur.edu.pl (corresponding author). ORCID: 0000-0001-7288-4552.

[2] Milan Sudzina, Pavol Jozef Šafárik University in Košice, Slovakia; e-mail: milan.sudzina@upjs.sk. ORCID: 0000-0001-9038-8018.

be conducted without reference to the sources that have shaped the modern understanding of the conception.

2. IDEA OF NATURAL RIGHTS

Pondering the conception of natural rights, it is necessary, in the first instance, to draw attention to a problem that is relatively common in the literature dealing with both philosophical and legal matters, namely, understanding the terms *natural law* and *natural rights* as identical. As aptly noted by M. Łuszczyńska, "these terms are used interchangeably by most authors" (Łuszczyńska, 2005–2006), as a consequence of which the boundary between these two expressions is blurred, leading to extremely significant implications. If we define natural-law theories as the conceptions built on the assumption that there is a normative system other than positive law (irrespective of whether that system originates from divine precepts, the nature, human reason, etc.), we will discern the whole "metaphysical baggage" that has been rejected, to a large extent, within the framework of modern legal and theoretical considerations. By saying so, I do not intend to claim that even today there are no theorists who adopt natural-law perspectives or that we cannot identify in the theories of natural law, whether classical ones or those with a variable content, any themes that may still be inspiring even nowadays. Nevertheless, when the idea of natural law is understood as identical to the natural rights conception, which is completely different, then the latter may be deemed useless in a modern discourse on law and this can also affect, and indeed, it does affect, the evaluation of the conception of human rights, which is sometimes regarded as identical with the doctrine of natural rights.

In order to give at least a simplified answer to the question about the possibility of understanding the conception of natural rights as identical to the idea of human rights, a brief introduction is necessary. There is a lack of consensus in the literature about when the idea of an individual's inalienable rights fully developed and what its origins are. To give an example, one may refer to the perception of Grotius as the founding father of the theory of subjective rights *(Grundungsheros)*, being "the initiator of the conception of rights arising from subjective rights" (Kolarzowski, 2009) – such a view has a long tradition which dates back to Pufendorf (Tierney, 1998). Some researchers (although they are definitely among the minority) emphasise the role of Hobbes, who finally severed all connections between natural law and natural rights (Rommen, 1998). Moreover, despite the fact that many authors deny that the English thinker's conception can be identified with the contemporary perspectives on the idea of natural rights, it is maintained that the definition of subjective rights, which originates from the Hobbesian tradition, nowadays, plays a pivotal role in decisions of constitutional courts, as well as of the European Court of Human Rights – "the theory of the will determines the fundamental manner in which subjective rights are construed at the constitutional level" (Stępkowski, 2013). Later in this article, attention will also be devoted to Locke's works, as this thinker is probably most often recognised, if not as the father of the idea under discussion, then at least as the originator of its most significant variety.

At this point, it is expedient to briefly present the periods of the development of the idea of natural rights. One may not contend that the period covering antiquity and the Early Middle Ages witnessed the emergence of the idea of natural rights (although many researchers strive to discern, more or less aptly, philosophical currents that might have given rise to the conception under discussion). During the Late Middle Ages and early modern times, considerations and, above all, new definitions of old terms emerged,

providing the basis for the conception of an individual's inalienable rights or for the development of such terms as a subjective right. The third period, the beginning of which is most often associated with Grotius, is the time when the idea of natural rights sparked off a heated debate and eventually became, in the form primarily put forward by Locke, the foundation of modern legal systems and the Enlightenment conception of human rights. While even a cursory examination of the first of these periods would go beyond the scope of this paper, the period when the foundations of the idea of an individual's inalienable rights evolved deserves attention. Nevertheless, it must be also noted that the literature on the subject distinguishes two ways that allowed for framing the modern conception of natural rights (and enabled its implementation in Enlightenment documents). On the one hand, this is the English way, which was initiated along with Magna Carta (at least such a starting point was indicated in the modern era, giving rise to a kind of a legend associated with this document), and on the other hand, the continental tradition, which is closely linked to the Christian philosophy (Sójka-Zielińska, 2000). The second of the aforesaid ways started in the Late Middle Ages with the dispute over investiture and the beginning of the separation of the church and the state (Dubel, 2003) and evolved during the discussion between the pope and the Franciscans about the status of private property (Bounamano, 2008). Nevertheless, it must be stressed yet again that the conception of natural rights or human rights was not framed in the course of medieval discourse in which the most prominent figures were, among others, William Ockham or Marsilius of Padua, but, as noted by Tierney, in the course of debates "then the reshaped language of rights was available for use in later contexts where it took on new significances and found new applications" (Tierney, 1991). Changes that occurred as part of the scholastic discourse are presented in detail by B. Tierney, who refers, among others, to the 12th century thinkers who more or less consciously began to use the term *ius* not to mean *ius naturale*, but to signify some kind of "power" or ability inherently associated with humans, which has proved, over time, to be a key precondition for shaping the idea of natural rights. What deserves attention, according to Tierney, is the fact that the way *ius* was seen, namely as some kind of authority or power, was based from the very beginning on a particular vision of the human nature, rationality and moral responsibility, however, it was rather not derived directly from the Christian revelation (Tierney, 1998). The opportunity to put the new terms into practice arose relatively quickly, which coincided, as a matter of fact, with the discovery of America and activities of thinkers belonging to the so-called School of Salamanca, whose output is open to very different interpretations even nowadays (Brett, 2003). Thinkers such as F. Vitoria, B. Las Casas applied scholastic formulas to solve new problems primarily related to the determination of the legal status of Native Americans (Castro, 2007). It seems that it was the school's achievements that enabled during the Renaissance, when lawyers were reluctant to engage in "scholastic" discussions, the conception of natural rights not only to survive, but also to become an instrument designed to solve practical problems falling outside academic disputes. As already mentioned, it is Grotius who is often mentioned to be the father of the idea of an individual's inalienable rights. In the doctrine of this thinker, *ius* is no longer the conformity of, for example, claims with natural law, but becomes something that an individual *has* (Haakonssen, 1985). In this manner, the theory assumes a non-theistic character (Tuck, 2002). Breaking with theism, and consequently, with the Christian doctrines of natural law, can be perfectly observed in Hobbes' thinking, whose achievements in the field discussed in this work are evaluated very differently. This stems from the fact that, on the one hand, many researchers who perceive Hobbesian rights as physical freedom consider them thoroughly different from

the contemporary models of an individual's rights (Cronin, 1992), but on the other hand, it is difficult not to arrive at the conclusion that Hobbes' philosophy is full of criticism that is centred on the perception of rights as what is just. Hobbes' rights, which are devoid of any obligations correlated with them, become truly subjective and, in a sense, universal (Malcolm, 2006). This doctrine completely rejects the previous understanding of the role of natural law, which loses its previous functions: it is no longer a moral basis for the norms of positive law, it is neither a determinant for justice nor a criterion for evaluating positive law (Rommen, 1998).

The above remarks, which are intended to imply that the doctrine of natural rights is based directly on thinkers' works dating back to the Late Middle Ages, do not change the fact that the conception of natural rights, as proposed by Locke, is considered the most significant Enlightenment project of an individual's inalienable rights. And while one can argue about the novelty of the doctrine presented by the English thinker, the fact is that due to its incorporation into normative acts, particularly in the United States at the time the country was coming into existence, its importance is unique. Some even maintain that if a term such as *natural rights*, which is used in Locke's doctrine, was replaced by the term *human rights*, the very doctrine would not lose anything of its internal coherence, which must not be construed, as a matter of fact, that it could provide axiological justification for the contemporary extensive list of human rights, which also encompasses economic, cultural or social rights (Machaj, 2010). And while it is impossible even to briefly discuss the doctrine in question here, what deserves attention is the fact that by rejecting the Aristotelian way of perceiving an individual and the society, Locke builds a theory in which an individual ontologically precedes the state (Lowe, 2005). It seems that Locke can be aptly regarded as a thinker whose doctrine crowns a long-established tradition, the most essential element of which is the granting of special status to an individual who becomes the subject of rights comprehended independently of obligations. Rights framed in this way are an expression of (negative) human freedom, but not an expression of ties between an individual and the society (Shortall, 2009).

3. HUMAN RIGHTS

To formulate a definition of human rights is extremely difficult. Although it can be formulated (in simple terms) in a manner that describes the shape of an idea emerging whether from the Polish law or pieces of international legislation or works of a particular thinker, it must be remembered that the idea in question is deeply rooted in the philosophy of law or ethics. Naturally, any attempt to formulate a definition must involve making certain assumptions, many of which will be controversial. This issue is referred to, among others, by M. Freeman, who differentiates between an ideal theory, which does not describe reality, but instead, formulates arguments for specific theses, and a non-ideal theory, whose object is to examine reality (Freeman, 2007). Moreover, it is not only the need to make certain assumptions, as mentioned above, attention should also be given to the fact that there were a number of factors that influenced the shape of the modern idea of human rights. In addition to historical events (World War II, the civil rights movement, etc.), we must take into account the philosophical and legal tradition, in particular, the achievements in the field of the natural rights theory, which are outlined above, as well as the fact that the very conception underwent the process of positivisation, which began at the end of the 18th century, continued also in the 19th century, to grow in importance in the second half of the 20th century. Having considered both the sources of the very conception and the

process of its adaptation to both international law and legal systems of individual states, we can notice that the issue under discussion must have been to some extent part of the dispute between the natural-law vision of law and legal positivism. Even if we assume, and that assumption would be legitimate in all respects, that the conception of natural rights, at least in its most significant manifestations, represented a break with the "classical" natural law doctrines, the "natural-law label" is still, even today, often assigned to the conception of natural rights, and consequently, to the conception of human rights.

As it appears, Dworkin was right when he claimed that the assumption of the existence of rights individuals have with regard to authorities must be based on the adoption of one of two assumptions. The first of them is the recognition of an individual's dignity – the idea associated with Kant, but found in many philosophical doctrines. The second one is related to political equality, which entails the protection of both weak and strong members of the community (Dworkin, 1978). The role of this view is emphasised, among others, by Z. Rau, who noted that these principles are the basis for both the idea of human rights and Western liberalism (Rau, 2013). This rather general view of the idea of human rights can be juxtaposed with example definitions. Thus, for example, the *Encyclopedia of Human Rights* describes human rights as "entitlements due to every man, woman, and child because they are human" (Wiseberg, 1996). The *Stanford Encyclopedia of Philosophy*, on the other hand, considers human rights to be "norms that aspire to protect all people everywhere from severe political, legal, and social abuses" (Nickel). Even a cursory examination, not only of the definitions cited above, but also other definitions, shows how much the idea of human rights, analysed on the level of positive law, requires reference to strictly philosophical issues. Human rights are very frequently seen as norms stemming from the fact that an individual having these rights is a human being, and therefore has a special moral status. Furthermore, human rights are often referred to as standards (usually minimal ones) that must be included in a normative system. However, the foregoing cannot lead to the conclusion that the discussion centred nowadays on the conception of human rights may be limited to simple juxtaposition between the positivist conception and the natural rights theories (or even the natural law) (Zajadło, 1998). Analysing the contemporary discourse on human rights, we can notice that one of the key issues is their justification, which takes various forms (Langlois). To give an example, one can point to attempts to base the idea in question on:

    a) Dignity (which is inalienable and possessed by all human beings);
    b) Reason (as a fundamental characteristic that distinguishes humans from other creatures);
    c) Autonomy (capacity for self-determination);
    d) Equality (all people have the same moral value);
    e) Needs (common to all people);
    f) Capabilities (neo-Aristotelian focus on human potential);
    g) Consensus.

It seems that despite the fact that there are many definitions and various justifications, it is most often accepted that human rights are those rights to which an individual is entitled for he or she is a human being, which makes them independent (at least to some extent) of the norms of positive law (Piechowiak, 1997). However, such a view is not typical only of philosophical argumentation, but is also seen in positive law – the articles, for instance, of the Universal Declaration of Human Rights set out the rights that a human is endowed with precisely by reason of his dignity, and it is through dignity that an individual is perceived as a subject of law (Dearden, 1970).

4. NATURAL RIGHTS AND HUMAN RIGHTS – CONCLUSIONS

By analysing the modern conception of human rights, we are able to establish its relationship with past ideas; nonetheless, this does not mean that we can say the terms are understood as identical or even claim that ideas dating back to the Middle Ages or even ancient times have been simply transferred to the modern deliberation. However, contemporary attempts to define human rights make some researchers claim that these are "rights for lawyers, not rights for philosophers" (Nickel, 2007), which, as mentioned by J.W. Nickel, stems from the fact that the term *human rights* is used to describe legal norms that were initially shaped in the interwar years and further developed after 1945. This author has determined the relationship between the conception of human rights and the idea of natural rights, however, argues that these ideas are completely different, and the existence of certain philosophical assumptions in documents of international law does not mean that they require special justification.

A view which is opposite to the one presented above is sometimes referred to as *naturalistic*. According to that view, human rights are rights possessed by all human beings always and everywhere, simply by reason of humanity, and are therefore natural rights, which means that they cannot be forfeited by an individual (Simmons, 2001). Nevertheless, as noted by Ch. Beitz, naturalistic conceptions assuming that the modern conception of human rights "inherits" certain elements directly from the idea of natural rights have different variations, however, what is common to all of them is the presence of two key elements: first, they are based on the distinction between human rights and rights originating from positive law – in such a view, human rights are most often seen as moral standards which serve, however, as the criterion for assessing the legitimacy or fairness of the norms of positive law (as was the case with the classical natural-law conceptions). The second element, common to naturalistic perspectives, is the recognition that an individual is entitled to human rights due to the fact that he or she is a human. Given this view, the term *human rights* is simply a new incarnation of the term *the rights of man*, which in turn replaced the term *natural rights* (that reverts to pondering about an individual's rights in the second half of the 20th century). It is worth noting that the naturalistic vision of human rights, which corresponds to the popular presentation of this idea, based to a large extent on Locke's works, needs to take into account the transformations that occurred after 1945. Traditionally, that is to say, in the spirit of Locke, rights of an individual are not difficult to institutionalise, as they assume the existence of a sphere of an individual's freedoms. Their protection requires, first and foremost, the existence of a legal system that recognises and protects them. However, economic and social rights require, rather than interference in the sphere of an individual's freedoms, positive actions taken by governments, which may, to a large extent, hinder the recognition of these rights as human rights (Cranston, 1983).

Researchers who do not agree that natural rights can be understood as identical to human rights, despite recognising historical links between these two ideas, do not acknowledge that all the key features of the first conception can be identified in the other one. Moreover, one can spot the problem which arises when we endeavour to understand the analysed ideas as identical, namely, the problem which is related to a multitude of their forms. Contemporary human rights are justified in philosophical discourse in various ways. Whereas, the very idea of natural rights, although commonly seen from the angle of Locke's works, took and still continues to take many forms. Assuming that natural rights are most frequently defined as the rights an individual has regardless of whether any legal

system exists or not, Ch. Beitz mentioned four basic features of doctrines, which must be taken into account. First of all, natural rights are not conditional on morality or positive law. It seems that this feature can be attributed also to human rights, if both them and natural rights are considered critical standards. Second, natural rights, especially as proposed by Locke, were seen as pre-institutional (in a logical, but not in a historical sense), which stemmed from the role of this conception, namely, it was to curtail government activities. It seems that the underlying principle behind the human rights system is something more than just the protection of an individual's freedoms: it is the definition of an individual's decent living conditions. Another feature of the idea of natural rights is its "eternity", independence from time and place. It seems that also this feature cannot be attributed to human rights, at least if we analyse their normative form (human rights can be of relevance only in societies that meet certain conditions, for example, have a developed legal system). It appears that the correspondence between the theory of natural rights and the conception of human rights is very visible because both are most often based on the assumption that rights belong to humans as such by reason of humanity (Beitz, 2009). It seems that the conclusions presented above are accurate. It is impossible to reject the historical influence of the conception of natural rights on the way the idea of human rights has been shaped, however, there are no grounds, as it appears, to understand these two terms as identical. We should note that the term *natural rights* puts emphasis on the human nature and possibly bears some relationships with the conception of natural law, but primarily the Locke's tradition. Whereas the term *rights of man* presupposes that a human is the source of rights, laying stress on his or her moral and rational nature and being identified with the revolutionary period, the term *human rights* is free of "defects" (i.e. has no reference to any idea of natural law) and is most often used, both in the academic discourse and normative acts (Donnelly, 1982). It seems that the modern idea of human rights is a conception which is so intricate and so multidimensional that to call it simply a new incarnation of the natural rights doctrine would be an oversimplification.

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