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Social Welfare Programs, Abortion And Government Interference In America: Implications for Korea

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Introduction

There are three Tiers of Rights: natural, individual quality of life, and group identity. Natural Rights are preeminent among these. Quality of Life Rights is of a progressive type that would enhance and/or displace Natural Rights. Identity Group Rights are growing in victim-affirming efforts to right past wrongs according to whims of various Group memberships at the expense of Natural Rights.

American government was conceived as the protector of Natural Rights through limited interaction with the governed. Second and third tier rights demand more government interference with the governed in order to placate the needy: this is what may be called. “big government.”

Non-interference, non-aggression, and particularly anti-discrimination principles originally associated with natural rights are being twisted to justify government action in support of lesser rights of the governed.

Immutability is a legal concept in U.S. Supreme Court jurisprudence that says that only groups identified by unchangeable characteristics need protection against the violation of rights. Progressives seek to expand the definition of “immutable” so that identity groups that are not linked by immutable characteristics may lay claims against the natural rights of outgroup members.

Progressive government acquiesces to identity group thinking and attempts to accommodate the demands of a growing number of identity groups. Conservative government limits its involvement in the moral antagonisms of society, instead protecting and nurturing only the natural rights to life, liberty and the pursuit of happiness (or property). Of these, conservative government is legitimate.

Social welfare organizations are strongest when they remain separate from government involvement and control. Private sector social welfare organizations draw support and continued existence by remaining responsive to the population at large.

Government involvement in the abortion question should be limited to prohibition against murder.

1. Basic Human Rights

Social welfare programs are efforts, made by government or private organizations, that attempt to ameliorate social problems or improve human behaviour. These programs are grounded in the idea of basic human rights; the idea that there are rights that inhere to each of us as human beings. However, in discussing human rights, we must further clarify. The broad concept of human rights can be narrowed to three general types or categories: Natural Rights, Quality of Life Rights, and Identity Group Rights.[1)]

1.1 Natural Law and Natural Rights

Both Eastern and Western philosophy have a long tradition of recognizing "Natural Law and Natural Rights." The West traces its tradition back to Aristotle, St. Augustine, and St. Thomas Aquinas as sources for its recognition of Natural Rights[2)] The East, instead, traces its tradition back to Taoism, the Confucian Canon, Moism, and the Chinese concept of "Li" (or "Lei")[3)].

The Western understanding of natural rights has evolved through time. St. Thomas Aquinas was not the first in the Western tradition to talk about Natural Rights, of course: Aristotle sought to understand Natural Law and Natural Rights through observation and experience. St. Augustine, several hundred years later, looked to revelation from God to expose Natural Right s[4)]. St. Thomas Aquinas suggested that Natural Rights can be conceived of

1) Peter C. Myers, "From Natural Rights to Human Rights–And Beyond", *Progressivism*, The Heritage Foundation(December 20, 2017), https://www.heritage.org/progressivism/report/natural-rights-human-rights-and-beyond(Retrieved August 15, 2020).
2) Ibid.
3) Hu Shih, "The Natural Law in the Chinese traditio", *Natural Law Institute Proceedings*, 5, 117. Notre Dame Law School(1953). http://www.brendans-island.com/blogsource/20170523-Documents/10_5NatLInstProc117-1953-.pdf(Retrieved August 16, 2020).
4) Peter C. Myers, ibid.

through Reason and Rational calculation[5]. It is this approach by Aquinas that seems to hold the most adherents today. Because it is not necessarily tied to a belief in God, it fits more comfortably with a secular philosophy.

More modern philosophers like John Locke continued to develop our understanding of natural rights. Locke famously listed the great Triad of Natural Rights as being "Life, Liberty, and the pursuit of Property." He developed his thinking in concert with Rousseaux and Montesquieu[6]. Locke associated Natural Rights with those functions that are uniquely human. Humans have the faculty of rational (and moral) cognition and insight, and this is bound together with our internal yearning for "happiness"[7]. His faculties-associated Natural Rights were unique to humans. In all of the animal kingdom, only humans possess this unique capacity for cognition and moral thinking[8].

Eastern sources for the notion of Natural Law and Natural Rights can be found in Taoism, the Confucian Canon, Moism, and the general concept of Li, (a Chinese idea, better translated as "Lei," and meaning something like the substance of the Natural Law of the universe—like the glue that holds existence together)[9]. Eastern tradition also holds the essentialness of the ideas of Natural Rights. In some ways the Eastern notion is deeper than the West's: in other ways the reverse is true. The common element between East and West conceptions of Natural Rights is that Life is paramount among all "Rights." Life, as "existence," is utmost.

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5) *From Natural Rights to Human Rights – And Beyond* Library of Congress Catalogue Card No. 57-11955
6) Peter C. Myers, ibid.
7) Ibid.
8) Ibid.
9) Hu Shih, Ibid.

1.2 Anti-discrimination Principle

A corresponding duty that is common to both the East and the West is that of "Anti-discrimination," and the related concepts of "Non-Interference," "Non-aggressio n"[10]. We may infer from this Anti-Discrimination duty that those humans better conditioned in life bear responsibility to preserve, nurture, and support the Natural Rights in other humans less fortunately equipped.[11] Similarly, the idea of Non-Interference suggests that one holder of a Natural Right may not interfere with that same right legitimately held by another. In the West, Hugo Grotius wrote of the Principle of Non-Aggression, suggesting that it is improper to interfere with the rights of another using force[12]. The correlated principle of Anti-discrimination suggests, further, that it is an affirmative duty to affirm and support the Natural Rights of others in equal measure[13].

The purpose of Government, simply stated by the Natural Rights advocate, is to secure the Natural Rights of its citizens and enable the holders of those Rights to Expand upon them[14]. Government should not be able to compromise Natural Rights because those rights did not emanate from either people or government, but pre-exist all other forms of Rights (1, 5).

1.3 Individual Quality of Life Rights

The Second type of Rights—Quality of Life Rights—can be traced back to the "Progressive Era" of the late 19th and early to mid-20th centuries, when socialist

10) Peter C. Myers, ibid; Hu Shih, ibid.
11) Peter C. Myers, ibid.
12) Ibid.; Hugo Grotius, "On the Rights of War and Peace", in *The Great Legal Philosophers: Selected Readings in Jurisprudence*, ed. Morris, Clarence, (Philadelphia: University of Pennsylvania Press, 1963)
13) Peter C. Myers, ibid.
14) Ibid.; John Locke, "Two Treatises of Civil Government", Book II. in *The Great Legal Philosophers: Selected Readings in Jurisprudence*, ed. Morris, Clarence, (Philadelphia: University of Pennsylvania Press, 1963).

principles qualified capitalist principles. This is particularly exemplified by the Economic Bill of Rights and "4 Freedoms" of Franklin Delano Roosevelt ("FDR"). With these, he endeavored to recognize and guarantee to citizens, not just Life, Liberty, and Property, but also Quality of Life in the form of such things as guaranteed employment, livable wages, medical care, and retirement care, among others.[15)]

FDR's Quality of Life Rights were government-fashioned rights, called "Positive Rights." These rights could be granted and taken away by its creator, the government.[16)] Positive Rights are of lesser gravity and substance than Natural Rights, but they appeal to the Needy in society. They are fashioned to impose upon others Natural Rights of Liberty and Property and to preserve them through Government action. For example, through taxes that fund Government-sponsored social welfare programs[17)]. Positive Rights are, thus, associated with Social Engineering programs designed to mold people and the nation into the form the Government designs.

1.4 Identity Group Rights

The third type of Rights is Identity Group Rights.[18)] These are particularly popular currently as people take on various veils of Victimhood associated with historic oppression of certain "identities" and thereby, ironically, gain priority in the hierarchy of victimized Identity Groups[19)]. Identity Groups in this strange competition may be built around race, age, sex, gender

15) Peter C. Myers, ibid.; Franklin Delano Roosevelt, "Four Freedoms Speech"(1941), *Message to the United States Congress,* Franklin D. Roosevelt Library and Museum, Albany, NY, (Retrieved August 20, 2020); Franklin Delano Roosevelt, (1944). "Economic Bill of Rights"(1944), *Message to the United States Congress,* in *The Public Papers and Addresses of Franklin D. Roosevelt,* ed. Samuel I. Rosenman, (NY: Harper and Bros., 1950), (Retrieved August 20, 2020).

16) Peter C. Myers, ibid.

17) Ibid.

18) Ibid.

19) Russell Spears, "Group Identities: The Social Identity Perspective", In *Handbook of identity theory and research, eds.,* S. J. Schwartz, K. Luyckx, and V. L. Vignoles, (Springer Science + Business Media, 2011), https://doi.org/10.1007/978-1-4419-7988-9_9(Retrieved September 12, 2020).

preference, or any number of other iterations within any of the categories mentioned in this sentence (i.e. the Lesbians may take umbrage and be in competition with the Bisexuals within the larger LGBTQ identity group). Furthermore, intersectionality – having membership in more than one of these formerly oppressed Identity Groups – tends to elevate the holder of multiple memberships in Status and Credibility[20].

Identity Groups twist the Nondiscrimination principle associated with Natural Rights and suggest that Out-group members must acknowledge, respect, serve, and even pay homage to the Identity Groups of Higher Priority[21]. The implications of this strange hierarchical relationship is that the more historically oppressed an Identity Group can portray of itself, the more deference that Identity Group membership can command vis-a-vis the members of other Identity Groups.

In the efforts of Affirmative Action campaigns to level historic disequilibriums, Identity Group Rights campaigns (like today's Black Lives Matter protest group in America) demand attention not to intentional unequal treatment in daily life, but to intentionally equal treatment that results in disparate outcomes. Even as the notion of "Equality of Opportunity" differs from "Equality of Outcome" in that Opportunity nurtures initiative and merit, and Outcome looks to engineer equal results regardless of initiative and merit of competitors, the focus on equalizing Disparate Outcomes as the standard of measurement of whether historical slights entitle interest groups to preferential treatment by society and its government results in skewing of objective results (of such things as aptitude tests) to attain desired "equal" results[22].

A case in point is the SAT exam used in college admissions. The entrance

20) Ibid.

21) Peter C. Myers, ibid.

22) Society for Human Resource Management, "What are disparate impact and disparate treatment?", SHRM(2020), https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/disparateimpactdis eved September 12, 2020).

scores that are regularly attained by Asians are such that they should get first priority in getting into major American universities. However, because Black applicants (which regularly score much lower on the aptitude exam) are underrepresented at these universities, they have been accepted over the better qualified Asians…[23]. The persistent discrepancy in scores between different racial groups in the US has led the entire California higher education system to drop the exam as a requirement for admissions.[24]

In a similar vein to the misguided university policies alluded to above, the American Government has several programs that weigh more in favor of historically oppressed Identity Groups through Affirmative Action programs in hiring, contracting, etc..[25] The difficulty the Government is facing now is that the number of Identity Groups claiming the right to deferential treatment is rapidly and exponentially expanding.[26] To keep up, Government must expand its presence in order to shoulder the burden of engineering equal outcomes for all groups in the grievance-based, victim-oriented Identity Group hierarchy. And there is no end of the multiplication of these groups in sight.

Thus, government is at a point where it must decide whether its purpose is simply to secure, protect, and nurture the original Natural Rights that pre-exist itself and all the people for which the government works, as was the purpose of the original American Constitutional federal government, or whether it will continually recognize new and evermore demanding Identity Groups to which it must cater, in which order it will cater to them (even though such catering erodes individuals' prior Natural Rights), and what social services and affirmative action programs it will maintain to

23) Scott Jaschik, (August 7, 2017). *The Numbers and the Arguments on Asian Admissions.* Admissions Insider: Inside Higher Ed. Online. Retrieved October 5, 2020 from insidehighered.com

24) Teresa Watanabe, "UC Makes Landmark Decision to Drop ACT and SAT Requirement for Admission", *L.A. Times,* May 21, 2020.

25) US Department of Labor, *Affirmative Action.*(2020) Online. Retrieved October 5, 2020, from dol.gov.

26) Peter C. Myers, ibid.

serve the New Unequal citizenship (unequal because Identity Group politics necessarily re-stratifies and segregates society according to the Group Identity hierarchy).

2. Legal Doctrine regarding Immutability in America

Tied up with these notions of Natural Law, Natural Rights, and the Anti-Discrimination Principle (including the Non-Aggression and Non-Interference Principles), is the firm resolution that people must not suffer discrimination for characteristics about themselves that they cannot change. We call those characteristics "Immutable." Immutable is defined by long-standing United States Supreme Court decisions.

Frontiero v. Richardson, 411 U.S. 677 (1973), for instance, explains that an "immutable characteristic" is "an accident of birth" and not a product of conscious action (at 686).[27] The concept has created the foundation for the legal protection of protected classes of people such as racial, age, and gender groups, among others. Legally, then, the immutable characteristic doctrine is the basis for fighting discrimination against people and groups that are wrongly stopped from flourishing in their Natural Rights.

Naturally, as legal scholarship and interpretation in America are not monolithic, but reflect conservative, left-wing, and other worldviews, there are courts that define "immutable characteristics" more expansively. This is largely from a progressive perspective that favors group identity rights over natural rights. For example, *Zavaleta-Lopez v. AG of the United States*, 360 Fed. Appx. 331 (3rd Cir. 2010) and others, define immutable characteristics such as "race, gender, or a prior position, status, or condition, or characteristics that are capable of being changed but are of such fundamental importance that persons should not be required to change them, such as religious beliefs" (*Id.*

27) *Frontiero v. Richardson*, 411 U.S. 677 (1973)

at 333)[28]. Most remarkable about this and like decisions, however, is that they are NOT decisions of the U.S. Supreme Court, but of lesser courts that have a very high rate of being reversed by the Supreme Court on appeal (between 70% and 90% depending upon the time-period referenced).

Why would progressive courts seek to expand the idea of immutable characteristics? Because they wish to elevate to the level of Rights what are at best expectations or entitlements among selected portions of the American population. If this can be done, then "rights" like abortion, deference to LGBT, or similar can arguably be elevated through progressive argument to the level of natural rights such that they can be said to be of equal import, when they clearly are not.[29]

3. Implications for Private/Public Social Welfare Programs

There is a place for Social Welfare programs. It is the duty of all mankind to take care of those of us in any sort of need. This is a moral duty, however, not one which should be undertaken by government, particularly insofar as such programs are of fleeting, changeable, and precarious nature in the hands of government. Even government funding of Private social welfare programs is dangerous, as every Dollar or Won spent by government in support of a Private or Quasi-Private Social Welfare entity comes with "strings attached." This leads to the regulation of the spending of such government-provided money so that the entity loses some of its sovereign decision-making capacity to the government agency.[30]

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28) *Zavaleta-Lopez v. AG of the United States,* 360 Fed. Appx. 331 (3rd Cir. 2010).

29) Sharona Hoffman, *The Importance of Immutability in Employment Discrimination Law,* Case Western Reserve University School of Law, (Faculty Publications. 11, 2011), https://scholarlycommons.law.case.edu(Retrieved October 2, 2020).

30) Peter Segall, "Federal money comes with lots of strings attached", Juneau Empire: Voice of Alask

So what is the future of Social Welfare programs that are designed according to ideas and goals that are not in line with the fluid parameters of government whim?

Complete Privatization is the answer. People can provide, out of their hearts, for the social welfare of other members of society better than any government program can. If the cause is worthy, then private endowment will keep the effort vibrant and responsive to the true needs of society, without subjecting it to the capricious whims of a controlling government. It is in Private Social Welfare programs that the future lies: the grace and charity of citizens, not government.

4. Implications for Abortion in America and Korea

The debate over abortion is often cast in human rights terms. Both those that are pro-choice and those that are pro-life argue that the issue touches on the inherent rights of humans – either those of the mother, or those of the unborn child. However, if you consider the issue from the perspective of the natural rights that underlie those human rights, the resolution of the controversy is clear. A foetus is a human, entitled to all the Rights associated with existence and to the protection of those Rights (such as to Life) by those better placed to preserve, nurture, and support them on their behalf until they can fend for themselves.

The remaining question, then, is "When does the human zygote qualify to be recognized as a Human?" First Trimester? Second Trimester? Third? From the moment of Conception?

Medical and Legal definitions vary over time, but are largely linked to the

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a's Capital(April 15, 2020), https://www.juneauempire.com/news/federal-money-comes-with-lots-of-strings-attached/(Retrieved October 5, 2020).

likelihood that the foetus can survive outside the womb if miscarried by the mother, whether with technological assistance or otherwise. If we turn to Eastern philosophy, the Buddhist belief in samsara (reincarnation) suggests that, when a person dies, they are reborn to live another life. Such a belief would require us to acknowledge that Humanness begins at conception. Although most conservative Christians would not agree with the samsara idea, they absolutely do agree with the conclusion that "life begins at conception."

The rational approach would be to treat a zygote as we would any "living" evidence of life that we might discover on, say, Mars: we on Earth would do anything and everything in our power to preserve and nurture even a single-celled organism there. Such an approach, applied to the Human experience, suggests that a foetus is a human from the moment of conception (fertilization of the egg), endowed with the Natural Right to Life, and demanding of the protection and nurturing of others likewise so endowed (whether they like it or not). It is neither within the right of government nor any person to interfere with the life and development of a foetus. The government may legislate only laws that are consistent with, and further and expand upon, the natural rights of the foetus.

Nor should the mother that is carrying the foetus aggressively interfere with the life of the separate being—the child inside of her—through means of abortion, except insofar as she is prepared to live with the knowledge that she violated the Natural Rights of another human in the most egregious manner possible.

5. More Expansive American approach to Abortion issue

A natural rights argument can be made for a right to an abortion. At the core of natural rights is the concept of liberty, and nothing is more representative of that concept than having personal autonomy – control over

oneself. The natural rights tradition of Locke grounds itself in the idea of a limited government power that operates with the consent of the governed.

We see this expressed in Locke's statement that "every Man has a Property in his own Person."[31] US law has long protected this property right in one's own person. In a famous and influential dissent, Justice Brandeis explained that the Constitution "conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men."[32]

Closely related to this strong emphasis on personal autonomy in natural rights are issues related to parenting and procreation. Family life directly relates to a person's autonomy, and choices about family formation are central to that. This is squarely within the natural rights ideas of Locke. He addressed the importance of this "Conjugal Society" as one that is centered around "its chief End, Procreation."[33]

The Kansas State Supreme Court recently adopted this natural rights basis for a right to an abortion in *Hodes & Nauser v. Schmidt*.[34] At issue in *Hodes* was the *Kansas Unborn Child Protection from Dismemberment Abortion Act.*[35] The Act prohibited what is known as dilation and evacuation methods, a common method used for most second-trimester abortions.[36] The plaintiffs, abortion providers in Kansas, brought suit arguing that this law infringed on the natural right of liberty.[37]

The Supreme Court agreed.[38] The Court pointed out ways in which a restriction on abortion could affect a woman's personal autonomy, interfering

31) John Locke, Two Treatises, Bk. II, § 27.
32) *Olmstead v. United States*, 277 U.S. 438, 478 (1928).
33) John Locke, Two Treatises, Bk. II, § 78.
34) 309 Kan. 610 (2019).
35) K.S.A. 65-6741 through 65-6749.
36) *Hodes & Nauser* at 614-15.
37) *Id*.
38) *Id.* At 613.

with the control over her body and the course of her life.[39] The Court then held that the right of liberty includes a woman's right "to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy."[40] While acknowledging that the government could put some restrictions on this right, the Court stated that this right was fundamental.[41] Thus, natural rights protect a woman's right to access to abortion.

Conclusion

The purpose of government is simply to protect and nurture natural rights. All else is left to the holders of those natural rights to respond to the needs of the people around them (those in need). The advantage of such a conservative government-populace relationship is that the people will find support for such social action as the populace believes to be moral and right directly from the people. And support for those "needs" that are deemed "unworthy" will naturally wane. No intrusion upon the natural rights that exist above all others in fellow members of the population need be made. Private social action, then, is most effective, autonomous (from government intrusion), and responsive to the ebb and flow of social mores.

Regarding abortion, the government which governs the least need proclaim only a prohibition against murder (illicit homicide). When it presumes to be more precise than such a general prohibition, it falls prey to the machinations of various interest groups that would seek to define "life" and "liberty" in a manner most responsive to their cause, requiring government to cater to an

39) *Id.* At 647.
40) *Hodes & Nauser* at 647.
41) *Id.*

ever-expanding number of interest groups regarding their private definitions. Static religious definitions of "life" may conflict with interest group definitions, but those differences are not for the government to settle fully and finally. The purpose of government (the Courts) is simply to apply criminal law to the facts: the matters of grace, mercy, and emotional support of those that would break the law comes at sentencing and post-determination by those best suited to minister to the broken—the ministering public.

Regarding its pending legislation on abortion, due for resolution at the end of 2020, Korea should rely upon its general criminal homicide legislation to include abortions, and not endeavor to address the matter separately.

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Although natural rights primarily concern life, liberty and property, they do encompass principles of anti-discrimination. However, these anti-discrimination principles being twisted from their original, natural rights, meaning and used to justify government action in support of lesser rights of the governed. While American government was conceived as the protector of Natural Rights through limited interaction with the governed, second and third tier rights

demand more government interference with the governed in order to placate the needy: this is what may be called "big government."

Central to second and third tier rights is the concept of immutable characteristics. Immutability is a legal concept in U.S. Supreme Court jurisprudence that says that only groups identified by unchangeable characteristics need protection against the violation of rights. Progressives seek to expand the definition of "immutable" so that identity groups that are not linked by immutable characteristics may lay claims against the natural rights of outgroup members.

The purpose of government is simply to protect and nurture natural rights. All else is left to the holders of those natural rights to respond to the needs of the people around them (those in need). A governments' primary purpose should be to protect natural rights, leaving it to the holders of those right to address the problems of those in need. As such, public (private) support for social "needs" that are deemed "unworthy" will naturally wane. No intrusion upon the natural rights that exist above all others in fellow members of the population need be made. Private social action, then, is most effective, autonomous (from government intrusion), and responsive to the ebb and flow of social mores.

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Key words: Natural Rights, Identity Group Rights, Economic Rights, Abortion, Social Welfare, Immutable,

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