

Since is not the only
source of rights.



**ASSIGN
BUSTER**

Since the State is the source of all rights, there can be no rights without or against the State. To have rights against the State is tantamount to saying that the individual has no rights at all.

Such a theory of rights is not acceptable to pluralists and many others. Laski says that the State does not create rights, but only recognises them. Nor is it true, he says, that an individual has no rights against the State. The State must observe the rights of man and “ it must give him those conditions without which he cannot be that best self that he may be.” It is not merely as a member of the State that the individual has rights. The State is one like various other associations of which he is a member, and all collectively create opportunities for him and contribute to his welfare.

“ Wherever men are banded together to perform a task that is part of the common welfare, that body so formed has rights real, and as compelling, as the rights of the State.” To limit the rights of man because of his membership of the State alone “ is to destroy his personality and not to preserve it.” A system of rights derived purely from law cannot be permanent.

It implies that law is not the only source of rights. The real source of rights is our conception of right and wrong. “ Rights,” according to Plamenatz, “ must have a foundation of right as against wrong.” There is no security or civilised life if rights depend on the whims of the State and, for that matter, on the government. Laski even says that in the interest of common good, it sometimes becomes the duty of the citizen to resist the State if it attempts

to frustrate his rights. Any system of rights, as he puts it, must harmonise the three aspects of life.

It must take into consideration the ideal claims of the individual for the common good; it must take cognizance of the reality of the claims of the association and it must not be oblivious of the claims of the community on its constituent elements.” The arguments referred to above are quite convincing. The Legal Theory does not give us a satisfactory explanation of rights. But all that the advocates of the legal theory say cannot be brushed aside.

Rights which are not supported by the laws of the State remain only claims. Barker has correctly said that the State is the immediate source of rights. No State can for long overlook the claims which are deemed essential for the moral development of man. Once these claims are recognized, they become rights. Thomas Paine, a devoted champion of natural rights, maintained that every civil right grows out of a natural right, and natural rights, he defined, “ are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others.” The essence of Paine’s observation is that the representatives of the people should endeavour to win legal recognition for all our rights which have a moral basis. It is in this context that Laski made his classic statement that “ Every State is known by the rights that it maintains.

” A right has, thus, both a moral and legal reference. “ A typical right”, as Bosanquet affirmed, “ unites the two sides. It both is and ought to be, capable of being enforced at law.”