

## HUMAN RIGHTS

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## Summary

The concept of human rights has had a rich history, beginning with the early discussions of the seventeenth century. There have been changes in the general understanding of what constitutes a human right, and theories of the nature, source, limits, and kinds of human rights clearly reflect changes in underlying views of the nature of the human person and the relation of the person to the community. Thus, one notes a general shift, over the last 400 years, from the view of the person, as a self-interested, autonomous being requiring a freedom from external coercion reflected in a few basic civil and political rights, to a “thicker” view of a person as social—and, in some cases, as fundamentally determined by social context—requiring a wide range of positive social, economic, and cultural rights. There has also been a movement away from providing a metaphysical or moral argument or foundation of rights, to a kind of phenomenological approach which regards rights simply as shared values or principles that people generally recognize. (Though there have been such shifts, the “early” view of the person and of natural, human rights is still influential in philosophical and political discussion.) Despite these changes, what lies at the root of the recognition of human rights is the notion of human dignity and value. It is for this reason that appeals to or for human rights have been central to movements for political change, particularly in the twentieth century. One can expect continuing discussion and debate about the utility and value of (a discourse of) human rights as society grapples with the question of what respect for human dignity and value entails.

## 1. Introduction

The concept of “human rights,” and the allied notion of “natural rights,” has had an important place in political discourse since the late nineteenth century. The origins of the concept of human rights can, however, be traced much farther back in time, with some authors arguing that it has its roots in mediaeval or even classical Greek thought. Nevertheless, it was not until the seventeenth century (with Hugo Grotius [1583–1645] in *De Jure Belli Ac Pacis* [*The Rights of War and Peace*] [1625]) that the term “rights” began to be clearly articulated, and not until Thomas Hobbes (1588–1679) and those who followed him (e.g. the Levellers, John Milton, John Locke, and George Savile, Marquis of Halifax) that it came to have a central role in political, social, and philosophical thought.

Broadly speaking, “human rights” are freedoms or powers that are or can be claimed by human beings, that enable them to engage in certain activities—with (at least) correlative obligations on others not to interfere—and that are derived from the dignity

and worth inherent in (or ascribed to) the human person. Such rights are frequently considered to be universal and to be necessary to the enjoyment of life.

Generally, these rights include rights to life, liberty, the security of the person, property, equal protection of the law, freedom of conscience and thought, free religious practice and expression, peaceful assembly and association, and to take part in the government of one's country. In addition, some have argued that there are other cultural and economic rights, such as rights to the free development of one's personality, to participate in the cultural life of the community, to marry, to have a family, to social security, to work and to receive just remuneration, to rest and leisure, to housing, to a standard of living adequate for the health and well-being, and to education.

The development of the concept of human rights is largely coextensive with the development of liberalism (see chapter *Liberalism*), and liberal political philosophies are almost invariably committed to the defense of human rights. [It might be suggested that utilitarianism, which is liberal but emphasizes a collective good that takes priority over rights, is an exception to this, but this is a matter of some debate. See J. S. Mill's *On Liberty* (1859) and "Use and Abuse of Some Political Terms" (1832).] Given that liberalism places an emphasis on human freedom and self-determination (especially the freedom to set one's own goals and to determine one's own conception of "the good," that it attributes a fundamental value to the individual human person, and that it holds that the legitimacy of the state—its claim to rule—is derived from the will of those governed by it), liberalism and human rights have often gone hand in hand.

The notion of "human rights" has, however, often been criticized for being vague and imprecise. Some have argued that, even if there are human rights, such rights as rights to life, to political association, to rest and leisure, to education, and so on, are not on a par. Again, there are different "traditions" of rights—the way in which the term is used by Hobbes is quite distinct from the way it is employed by Locke, or Bernard Bosanquet, or Jacques Maritain, or John Rawls. Moreover, discussions of "human rights" (initially) understood them to be primarily "natural rights"—they are still frequently seen in this way—but there is a wide debate on what it means to say that a right is "natural," about to whom or what such rights may be ascribed, what their limits are, what their relation is to political authority, whether they are alienable, and whether the notion is, in fact, better expressed by references to the duties of others. Finally, it is not clear whether something claimed as a *human right* is a right that is "innate" in the individual human person, or a right accruing to individuals as social beings, or a legal attribute of a person in a particular society or state.

Much of the contemporary discussion of human rights involves the constitutional, political and legal charters and related instruments in which they appear. The first such charters are those found in such documents as *The Virginia Declaration of Rights* (12 June 1776), *The Declaration of Independence of the United States* (4 July 1776) and Amendments I–X to the Constitution of the United States [*The Bill of Rights*] (1791); the French *Déclaration des droits de l'homme et du citoyen* [*Declaration of the Rights of Man and the Citizen*] adopted by the Constituent Assembly in 1789 and the *Constitution* of 14 September 1791, and the *Constitution of Poland* (of 3 May 1791). Perhaps the most important documents of the twentieth century are the *Universal*

*Declaration of Human Rights*, adopted by the General Assembly of the United Nations in 1948, and the subsequent UN International Covenants on Economic, Social and Cultural Rights (1966), on Civil and Political Rights (1966), and the Optional Protocol to the International Covenant on Civil and Political Rights (1966).

## 2. Defining Human Rights

### 2.1 Natural, Civil, and Legal Rights

Generally, when people employ the term “human rights” they mean some or all of the following:

- (a) Natural rights: Traditionally, human rights—particularly natural rights—have been defended by an appeal to a “foundationalist,” moral, or metaphysical justification. These are, then, rights that individuals possess in virtue of the kinds of beings they are—that is, naturally, or “essentially” (e.g. *qua* persons or *qua* rational beings). (Sometimes other conditions are included as well, such as being free, rational, autonomous, capable of having or identifying one’s good, capable of articulating and acting on a plan of life—or just having the potential to possess such characteristics.) In other words, these rights are not held by individuals in virtue of some “incidental” characteristic—e.g. being a member of a certain class or race, having a particular position or function in society, and so on. Natural rights are generally held to be rights of individuals, not of collectives.

Such rights are sometimes said to be natural because they are discovered by reason in nature or in the “natural law”—i.e. reason “sees” that certain beings must have certain rights in order for them to act as the kind of beings they are. Because such rights can be naturally known by all rational beings, those who can know and benefit from them must therefore respect them. These rights are, furthermore, sometimes said to be “natural” in the sense that they would exist in a state of nature, if there ever were such a place.

On each of these models, because these rights are “natural” to persons, they are also usually considered to be inalienable without the right-holder’s consent. Examples of these rights would be the right to life and to preserve one’s life, the right to pursue (one’s own conception of) the good, freedom of conscience, and to be treated as a person.

Frequently, natural rights are described as basic—that is, as not depending on any pre-existing duties or responsibilities. Here, rather than being derived from or subject to a particular conception of the good, they are part of “the good” and therefore serve as the standard of right and wrong action.

Natural rights are held to be antecedent to, and independent of, the state in general, and of any government or political regime in particular. As natural and ascribed to persons in virtue of them being persons, they are moral claims that must be respected, and serve as limits or preconditions or “trumps” on what others—even the state—can do. For this reason, they have not only moral but legal force.

- (b) Civil rights: These are rights that individuals are said to possess as members of political communities in general, and are part of the *ius gentium* or law of nations. These should—though, in fact, they may not, like natural rights—be respected within every particular political community. As with natural rights, civil rights are ascribed to persons simply in virtue of them being persons, but they presume a formal juridical order, though not necessarily a written or codified one. This order and these rights are universal, but are known only through the exercise of reason. Examples of such rights are rights to participate in one’s own government, to political association, and to free expression and discussion (and, perhaps, to the private ownership of material goods).
- (c) Positive or purely legal rights: These are the rights that human beings have simply in virtue of conventions, agreements, customs or laws peculiar to a particular state or community. These rights may depend on the very specific functions or activities that person may have—or simply on state fiat—e.g. having a right to drive an automobile, to vote in the legislature or parliament, to discipline one’s children, to receive a certain level of social assistance, and so on. Such rights are granted by the state and can be extended or alienated by it as well—for example, in view of social well being or a common good. While there can be moral claims for such rights, often no metaphysical justification of rights is given. (There is some debate among philosophers and among legal theorists whether one may have a positive or legal right to engage in an activity that is immoral or is inconsistent with someone’s civil or natural rights.) Because such rights are “contingent,” some would dispute the view that they are human rights—though this is not the view of legal positivists, legal realists, and of an increasing number of states (see below, for an elaboration of this point). Thus, while human rights are often present in constitutions, charters, and bills of rights, and while they are often justified by the claim that they are “natural,” their legal weight is derived from the fact that they are (simply) legal rights.

Despite the preceding distinction, there is a continuing debate whether there are any rights other than legal rights, and whether a particular claim to a power is a claim to a natural, or a civil, or a purely legal right.

## 2.2 Negative and Positive Rights

A further distinction in rights, particularly since the late nineteenth century, is based on a presumed difference between “negative” liberty and “positive” liberty.

One model, which emphasizes negative liberty, holds that to have liberty or to be free is simply not to be hindered in the pursuit of one’s good by others. A human right, then, is simply a claim to be free from external interference. Individuals have the right to do whatever they wish so long as it does not interfere with others pursuing their rights, and the place of the state is simply to hinder those who would hinder another from exercising her or his rights.

Some argue that, in addition to negative rights, there is a second model of rights—positive rights. On this view, the development and growth of individual persons requires not just (or not primarily) freedom from external interference, but also freedom to attain

some goal or result—specifically, the development of oneself as fully human. Thus, we do not have the dignity and respect due us unless we have access to, and therefore have a genuine power to choose, those things necessary to our development as persons. One's rights, then, involve more than being assured that others do not illegitimately interfere in one's pursuit of the good. They require that one have the opportunity and the means to acquiring certain goods.

It has been argued, however, that claims to positive rights require the restriction of more fundamental negative rights (and civil liberties), and that positive rights undermine fundamental negative rights. This discussion continues today.

### **2.3 Individualist and Collectivist Views of Rights**

In line with the preceding distinction between negative and positive rights, there are two principal currents of theories of human rights. The first (and perhaps the most dominant view) is the “individualist” current. This view is found from the time of Hobbes, but can also be attributed to Locke, Adam Smith, and Herbert Spencer (and, perhaps, J. S. Mill)—and, in our own day, to Robert Nozick and Ayn Rand.

On this view, rights are primarily characteristics of individuals, guarantee the value and respect of individuals, and are basic in that they are constituent of each individual's conception of the good. Here, individual rights take priority over social or collective goods or interests. Thus, each individual has a right to determine her or his conception of the good, and therefore individuals can act on their rights as far as they wish, just so long as these actions do not conflict with the similar rights of others. The rights of collectivities are simply the aggregate of the rights of individuals, and the former cannot have priority over the latter. Even though collectivities have a greater number of rights, the rights are the same in kind, and so a greater number of rights do not entail a greater right. Frequently, this current reflects a view of the human person as “atomistic”—that is, of individuals as fundamentally, morally and ontologically, independent of one another.

A second current of human rights is “non-individualistic”. Here, it is agreed that freedom and human rights are demands of the development of human personality, but their moral and legal weight is not based simply or primarily on the value of the individual, but on the fact that these rights exist in view of a common or shared end. On this second view, human rights are important—and may even be fundamental—but individuals do not wholly determine their concept of the good, and there are certain common goods that society can expect all of its members to respect and promote. Moreover, because individuals are seen as primarily social beings, some, if not all, rights can be restricted where they would conflict with a social or common good or right.

### **2.4 Social or Collective Rights**

While human rights are classically ascribed to individuals as individuals, as noted earlier they now often include collective or social rights. In one sense all rights are “social,” because they exist where individuals are not alone and involve obligations on

others. But in a deeper sense, social or collective rights are rights of collectivities, such as a nation's right to determine its own affairs, language rights, rights of minority groups, the right to development and permanent sovereignty over natural wealth and resources, and so on. Commonly, collective rights are considered to be more than a sum of individual rights, and can also sometimes override certain individual human rights. The ground of the priority of collective or social rights is not necessarily based on numbers. It may be based on the well-being of the community as a whole, but can also be based on their necessity to human dignity or to collectivities and individuals retaining certain characteristics (language, religion, or culture) that are essential to those who are members of that language, religion, or culture (see chapter *Religion and Politics*).

## 2.5 Universal Rights

One final distinction that should be made is between “universal” rights and the claim that human rights are culture specific and that there are no universal standards for human rights. In the former case, certain rights are held to apply to all human beings, as human beings, because they are constituents of basic human dignity, and they are necessary to life as persons. On the other hand, those who hold that human rights are culture specific claims do not deny the existence of universal human rights, but say that the universal applicability or the appropriateness of these rights in each culture must be considered in the context of that culture and its particular understanding of the nature of persons and their relation to society. Because of the wide variation of basic cultural or material conditions among societies and cultures, one cannot expect to find the same rights, or certain rights accorded the same priority or value, in all cultures.

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### **Biographical Sketch**

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