



**Subject : Human Rights & Duties**

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**Paper :** Philosophical Foundations of Human Rights; Duties and Responsibilities


**Module :** Natural Rights



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Description of Module	
<b>Subject Name</b>	Human Rights and Duties
<b>Paper Name</b>	Philosophical Foundations of Human Rights; Duties and Responsibilities
<b>Module Name/Title</b>	Natural Rights
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<b>Pre-requisites</b>	
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<b>Keywords</b>	

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## 1 Learning Outcomes

At the end of this module, the learners will be able to:

- i. Understand the emergence of natural law and natural rights
- ii. Understand the significance of natural rights in the development of human rights
- iii. Understand the critical evaluation of the theory of natural rights

## 2. Introduction

This unit focusses on the study of theories of human rights. It starts with the study of natural law. The natural law thesis gave birth to natural rights. There are also other theories of rights but in this module, we are concerned with the natural rights and its transformation to human rights. In this inquiry, we need to first reflect upon the term 'rights'.

## 3. What are rights?

Rights refer to those entitlements as a result of which one may choose to perform certain actions or refrain from performing certain others. Every right has a corresponding duty. In other words, if A has a right 'x' against B, it means that B has an obligation to discharge a certain duty towards A.<sup>1</sup> In this situation, A is regarded as a 'Rights bearer' while B is regarded as a 'duty holder'. Normally, duties are held against the State but they can also be held against family (in the case of the rights of the child) or a corporate entity or another individual. Please consider the following example:

Statement: Gopal has a right to be free from torture.

In this case, Gopal is the rights bearer and State has a duty to ensure that Gopal enjoys a life free of torture. The right in question is 'right to be free from torture'.

In simple terms, natural rights imply that every person, simply by virtue of being born as a human being, is entitled to certain basic rights. These rights are regarded as inalienable or which cannot be taken away. They form a system higher than that of positive law, similar to God's laws or laws of nature.

Before we go further, it is important to define and understand certain terms.

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<sup>1</sup> Harvard Law Review 'A Restatement of Hohfeld' by Max Radin, vol LI, 1938 no.7

### 3.1. State of nature

While introducing this concept, philosophers ask us to imagine a situation before the State came into being. A situation prior to the State is called the state of nature. It is a hypothetical situation and has the following attributes:

- No government
- No territory
- No centralized authority having a monopoly over the legitimate use of coercion
- Only natural laws operate.

Based on the state of nature and assumptions about human nature, political scientists theorized on the origin of State. It is worthwhile to examine what the life in a state of nature is like without a State and its institutions and what kind of inconveniences can be anticipated in such a state. How can natural laws help in such a State?

### 4. Natural law

Natural Law refers to rules of conduct which are determined by human nature, the natural conditions of human existence, or the requirements for human beings to flourish and develop. It is associated with the will of God and gives rise to questions about enforceability. Natural Rights are rights which persons possess by nature. i.e. without any basis in a Declaration, Convention or Act or in the absence of political and legal institutions.

On the other hand, positive rights refer to those rights which have been conferred or guaranteed by a particular legal system. We might distinguish natural rights, moral rights and legal rights. The last category i.e. legal rights are recognized by positive law.

All natural rights theories discuss the features that humans have by their nature, and which make respect for certain rights appropriate. The theories differ over precisely which attributes of humans give rise to rights, although non-religious theories tend to fix upon the same sorts of attributes described in more or less metaphysical or moralized terms: free will, rationality, autonomy, or the ability to regulate one's life in accordance with one's chosen conception of the good life. Natural rights theorists agree that human reason can grasp the fact that it is appropriate to treat beings with such attributes in certain ways.<sup>2</sup>

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<sup>2</sup> <http://plato.stanford.edu/entries/rights/>

Grotius, Thomas Hobbes, Pufendorf and John Locke had all defended natural rights. Locke, for instances, in his writings on State and government, argued that the rights to 'life, liberty and property' which existed from prior to formation of civil society, continue to so exist; moreover, they put limitations on the legitimate authority of the state.

Natural rights are, therefore, those rights which derive force from the natural status of things—that all men are born free, that every human being is equal—without any artificial superimpositions like in a society. It is the human nature that determines this status.<sup>3</sup>

Natural rights sets the ideal towards which all other man made laws should be directed and in case of conflict, though not factually so, but morally or from the point of legal principles, the natural rights ought to triumph.

Which rights may be classified as natural rights admits of no easy answer. Logically, humans being rational, those rights which can be discovered through rationality should be treated as natural rights. The power to think and reason is the defining characteristic of all human beings, which essentially differentiates them from the other living beings.

Maritain enumerates a list of nine natural rights which include the rights to life, liberty and property, the right to pursue religion of one's choice, the right to marry and raise a family and the right to be treated as a person with dignity.

## 5. Different Theories of Natural Rights

Discussions of natural rights sometimes distinguish between objective and subjective rights. This terminology is somewhat misleading, because in a certain sense, every genuine right has both objective and subjective dimensions. My rights are objective in the sense that it is objectively right for me to have them, but they are subjective in the sense that they are mine, something that I, the subject, "have." Usually, those who speak of objective and subjective natural rights are not really distinguishing between different kinds of rights, but between different theories of rights that may, respectively, be called classical and revisionist. Classical and revisionist theories disagree about where rights come from, about what rights one really has, and about how an individual's rights should be interpreted<sup>4</sup>.

## 6. Natural rights and human rights

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<sup>3</sup> 'Theories of Rights' by Jeremy Waldron

<sup>4</sup> <http://undergroundthomist.org/sites/default/files/Natural-Rights.pdf>

Human rights are those universal rights that are possessed by all human beings, both in the state of nature and in other ‘non-natural’ states and whose justifications are not merely conventional (i.e. independent of and prior to law and society). These rights are innate and, therefore, cannot be lost either through renunciation or alienation or by forfeiture or by prescription etc<sup>5</sup>. The moral appeal of human rights lies in the idea that every person in the world, irrespective of an empowering legislation, possesses certain basic rights like freedom of expression, right to life and liberty, right against non-discrimination etc. which others ought to uphold and respect. The U.S. Declaration of Independence, 1776, the French Declaration of the Rights of Man, 1789, the Universal Declaration of Human Rights, 1948 and numerous other Charters and Treaties echo this.

To have a right, therefore, is to have a valid claim. However, natural rights are not absolute in that there do exist exceptions to internationally recognized human rights<sup>6</sup> Natural law insists that what the law is depends in some way on what the law should be.<sup>7</sup> Raz defines natural law theorists as those who think it a criterion of adequacy that it is a necessary truth that every law has moral worth<sup>8</sup>.

### 7. French Declaration of the Rights of Man and of The Citizen, 1789

Inspired by the philosophical foundations of Enlightenment such as individualism, the general will, the social contract and the like. The declaration embodies the ideals of democracy, rule of law, equality, universal brotherhood and governmental accountability towards which France pledged to struggle in the future<sup>9</sup>. The Preamble of the Declaration states as follows: “..believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man,.... simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all.”

Articles<sup>10</sup> – “1. Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.

2. The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

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[https://books.google.co.in/books?id=VcUfCAAQBAJ&pg=PA145&lpg=PA145&dq=are+natural+rights+simply+moral+rights?&source=bl&ots=q4vlm\\_g393&sig=iDuwvaRaY5PcFk6qUjKedDAE15k&hl=en&sa=X&ved=0CCQO6AEwAzgKa hUKEwiKhLOH64\\_IAhXGkI4KHbwZCMA#v=onepage&q=are%20natural%20rights%20simply%20moral%20rights%3F&f=false](https://books.google.co.in/books?id=VcUfCAAQBAJ&pg=PA145&lpg=PA145&dq=are+natural+rights+simply+moral+rights?&source=bl&ots=q4vlm_g393&sig=iDuwvaRaY5PcFk6qUjKedDAE15k&hl=en&sa=X&ved=0CCQO6AEwAzgKa hUKEwiKhLOH64_IAhXGkI4KHbwZCMA#v=onepage&q=are%20natural%20rights%20simply%20moral%20rights%3F&f=false)

<sup>6</sup> Hart’s ‘Are There Any Natural Rights’

<sup>7</sup> <file:///D:/JGLS/MINE/4th%20YEAR/1st%20SEMESTER/RESEARCH-Registrar/34UFlaLRev165.pdf>

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<https://books.google.co.in/books?hl=en&lr=&id=1IRFHEI6JQoC&oi=fnd&pg=PP2&dq=what+is+natural+law&ots=GTLT4rtcJy&sig=tdc1LY0i3qCw9ggUYbL2p0g2IIM#v=onepage&q=what%20is%20natural%20law&f=false>

<sup>9</sup> Lauren, Paul Gordon (2003). *The evolution of international human rights: visions seen*. University of Pennsylvania Press. p. 32. ISBN 9780812218541.

<sup>10</sup> [http://avalon.law.yale.edu/18th\\_century/rightsof.asp](http://avalon.law.yale.edu/18th_century/rightsof.asp)

... 4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights

.. 6. Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.

... 8. The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment

..10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.

...11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

... 16. A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.

...17. Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.”

## 8. US DECLARATION OF INDEPENDENCE, 1776

The Declaration was the culmination of a series issued against British colonial policies, embodying early formulations of the principles of statehood, self-determination, effective governance and representative democracy.

- Appeal made to the opinion of mankind and those of Nature’s laws and of God<sup>11</sup>

Text<sup>12</sup> – “When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a

<sup>11</sup> <http://www.nlnrac.org/american/declaration-of-independence>

<sup>12</sup> [http://www.archives.gov/exhibits/charters/declaration\\_transcript.html](http://www.archives.gov/exhibits/charters/declaration_transcript.html)

decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government

.. We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”

When we carefully examine the above Declaration, we see certain phrases like ‘we hold these truths as self-evident’, ‘inherent dignity’ or references to ‘god; etc. These are significant and they echo principles of natural law and natural rights.

## 9. UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

The Preamble of the UDHR asserts that “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind...

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,



Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human 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,.."

The following Articles are important.<sup>13</sup>

“**Article 1.** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.



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<sup>13</sup> <http://www.un.org/en/documents/udhr/>

**Article 2.** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status..


**Article 3.** Everyone has the right to life, liberty and security of person.

.. **Article 5.**No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6.**Everyone has the right to recognition everywhere as a person before the law.

... **Article 12.**No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

.. **Article 18.**Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.



**Article 19.**Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

... **Article 21.**(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures..."

As one can see, each of these articles has a relation with natural law or natural rights.

## 10. CRITIQUES

## 10.1. UTILITARIANISM

It refers to a system of ethics which is premised on the assertion that in order to be justified normative appraisals must be shown to advance the general welfare of the society<sup>14</sup> i.e. greatest good for the greatest number of people. The probable consequence of every action must, therefore, be weighed in order to determine as to whether the same furthers the common good or not. Famous exponents of this school of thought are Jeremy Bentham and James Stuart Mill.

Bentham despised moral rights, including the concept of natural rights, which were independent of social recognition or enforcement. Bentham had stated in his *Anarchical Fallacies* that “rights is the child of law...from real law comes real rights: but from imaginary laws, from law of nature, come imaginary rights... Natural rights is simple nonsense, natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts.”<sup>15</sup> In other words, he termed natural rights as utter nonsense.

It can be said that Bentham’s opposition stems from his thesis on rights and obligations - that obligations are grounded in coercive legal rules<sup>16</sup>, in the absence of which no one can claim any right. A right having intrinsic moral worth but devoid of enforcement was not a ‘right’ in the first place. The utilitarian approach is inherently at odds with natural rights which are more in the nature of moral obligations. When a person has a right to do something, it provides an argumentative threshold against objections to enjoying that right. Say, X has a right to life—he need not show that his life is valuable or that keeping him alive advances the general welfare of the society. Just by virtue of having been endowed with this right, X is entitled to defend it, although he may not be justified in adopting any measure whatsoever. X, however, can and ought to defend his right even at some cost to the overall welfare; minimal increments in utility can hardly be supposed to overcome the argumentative threshold of X’s right. Thus purely welfare considerations cannot sit well with the idea of natural rights having moral force<sup>17</sup>.

## 5.2. OTHER CRITIQUES

“Critics of natural law theory say that it is doubtful, however, that the inherent nature of Homo sapiens establishes laws of behavior for human beings in the same way as it may establish laws of behavior for cats, lions, and polar bears. It is especially difficult because so much of human behavior is shaped by the environment, that is, by deliberate and nondeliberate conditioning, training, and education.”<sup>18</sup>

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<sup>14</sup> ‘Theories of Rights’ by Jeremy Waldron

<sup>15</sup> Page 4 of Centre for Distance Education, PGDHR, Course 441 &Block 1,University of Hyderabad

<sup>16</sup> ‘Theories of Rights’ by Jeremy Waldron

<sup>17</sup> ‘Theories of Rights’ by Jeremy Waldron

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[http://www.qcc.cuny.edu/SocialSciences/ppectorino/ETHICS\\_TEXT/Chapter\\_7\\_Deontological\\_Theories\\_Natural\\_Law/Problems\\_with\\_Natural\\_Law.htm](http://www.qcc.cuny.edu/SocialSciences/ppectorino/ETHICS_TEXT/Chapter_7_Deontological_Theories_Natural_Law/Problems_with_Natural_Law.htm)

Hart accepts the idea that the end of the person might determine the existence of objective principles that lead towards such good, but only insofar as this idea refers to the end of survival... inasmuch as it extends to all aspects of human life beyond its modest minimum<sup>19</sup>. according to most traditional theories the principles of natural law are self-evident truths discovered by the light of reason. Thomas, for example, argues that the basic principles of natural law are self-evident, at least to "the wise", that is to people who understand the meaning of terms used in stating the principles. This is not Hart's position. He argues that given certain simple truisms and the goal of self-preservation, certain minimal content of law is a "natural necessity". He does not claim self-evidence even for the simple truisms, let alone for the minimal content of law. Fourth, according to Hart the minimal content of natural law may apply only to a small sub-group in a society. St. Thomas seems to believe that natural law, at least in principle, must apply to all men<sup>20</sup>.

Natural law theories conflict with both atheism and agnosticism. Atheism denies the existence of a Creator for the universe. This invariably goes against natural law which holds that Creator's existence has a purpose and that life must be aligned to this purpose. Therefore the idea of purpose for life cannot be accepted without accepting the existence of a Creator. Natural law theories assume that the human mind, simply by looking at the natural inclination of creation, can determine the purpose of life given by the Creator. But there is no proof behind such an assertion.

### 1. Significance of Natural Rights in the Development of Human Rights

Individual rights is conceptualised on political ideals and based upon natural rights and its offspring like natural rights. Individual rights, as primarily understood, are the limitations upon all governmental powers i.e. legislative, executive and judicial. As human rights derived out of natural rights, they are rights as claims and not charity or endowments of the State. Human rights are the claims upon the society and not against the society, means the good of an individual is best flourished in a society and not independent of it. Further, the idea of international human rights is not derived out of any philosophical understanding, rather from political ambitions and inspired by American and French constitutional developments. They are not only negative connotation but positive also that mandates the State to take appropriate positive actions to achieve them. In result, as some author suggests: "after the founding of United Nations Organization in 1945, human rights replaced the phrase "natural rights" which fell into disuse partly because of religious sentiment and the fact that the

<sup>19</sup> <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1077&context=ajj>

<sup>20</sup> <http://www.jstor.org/stable/pdf/23679407.pdf?acceptTC=true>

concept of natural law to which it was passionately and intimately linked had become a subject of great controversy.”<sup>21</sup>

There is no unanimity even amongst those who recognize natural rights as to their content. Natural rights have been seen as gifts of God, as correlative to duties imposed on man by God and concomitants of human nature or reason.

## 2. Summary:

Natural rights imply that every person, simply by virtue of being born as a human being, is entitled to certain basic rights. These rights are regarded as inalienable or which cannot be taken away. They form a system higher than that of positive law, similar to God’s laws or laws of nature.

Natural Law refers to rules of conduct which are determined by human nature, the natural conditions of human existence, or the requirements for human beings to flourish and develop. It is associated with the will of God and gives raises to questions about enforceability. Natural Rights are rights which persons possess by nature. i.e without any basis in a Declaration, Convention or Act or in the absence of political and legal institutions.

Natural rights are, therefore, those rights which derive force from the natural status of things—that all men are born free, that every human being is equal—without any artificial superimpositions like in a society. It is the human nature that determines this status.

Bentham despised moral rights, including the concept of natural rights, which were independent of social recognition or enforcement. Bentham had stated in his *Anarchical Fallacies* that “rights is the child of law...from real law comes real rights: but from imaginary laws, from law of nature, come imaginary rights... Natural rights is simple nonsense, natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts.”<sup>22</sup> In other words, he termed natural rights as utter nonsense.

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<sup>21</sup> Eje Adakole Odikey, Hemen Philip Faga, Iruka Wilfred Nwakpu, *Incorporation of Fundamental Objectives and Directive Principles of State Policy in the Constitutions of Emerging Democracies: A Beneficial Wrongdoing or a Democratic Demagoguery?* 7 Beijing Law Review, 267, 269 (2016).

<sup>22</sup> Page 4 of Centre for Distance Education, PGDHR, Course 441 &Block 1,University of Hyderabad