

REMARKS ON NATURAL LAW THEORY AND NATURAL RIGHTS

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What question does Natural Law Theory aim to answer?

- Why should we obey the law (and the State)

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- a) Preliminary clarifications : ambiguity of the term “natural”
 - Theological/catholic versions (St.Thomas and following Catholic interpretations)
 - Hyper rationalist theories (social contract theories)

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- b) Difference between “natural law” and “natural rights”
- Natural law as a moral law grounding natural rights

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Example

Locke's Second Treatise on Government 1689

- Source: human reason as capable of interpreting divine will/reason (not arbitrary)
- Grounding criticism of slavery! Natural Rights to liberty, equality, property

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- Why should one obey natural law? An interpretation of Locke
 - A) Natural law grounds duty to preserve oneself and have others to commit to
 - B) A) grounds the duty to preserve others (by reciprocity)
 - C) A)+B) ground my right not to be violated my natural rights (life, security, liberty)

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- ✘ What is distinctive of theories of natural rights?
 - Laws are immanent to nature and reason and are to be discovered, not created i.e. by a bill of rights
 - a) State of nature and social contract theory are a conceptual tool for such a discovery

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- ✘ What is distinctive of theories of natural rights?

- Rationalism: traditions have to be justified in view of rational standards – “tribunal of reason”
 - a) State of nature
 - b) Contract theory
 - c) Abstract universalism
 - d) Individualism of subjective rights

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- Equality of Human Beings: different grounds i.e. rank, dignity etc.
- Emancipation: individual freedom and self determination vs illegitimate power based on unjust customs

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✘ What is distinctive of theories of natural rights?

Modern versions: 1776-1789-1945

- 1776 - American Declaration of Independence
- 1789 - French Revolution – Declaration
- 1945 - Universal Declaration

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➤ 1776 - American Declaration of Independence

“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”



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- 1789 - French Revolution - “The representatives of the French people..believing that the ignorance, neglect, or contempt of the rights of man are the sole caose of public calamities..”

Art1. Men are born and remain free and equal in rights. Social distinctions may be found only upon the general good.



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- ✘ Causes of decline of natural law/rights since 1815
- Bentham and Burke on the “excesses” of French Revolution, i.e. Terror
- Regarded as “subversive”: no tradition is exempted from the “tribunal of reason”

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- Anticlericalism

- Development of a new approach: utilitarianism
 - a. No need of natural rights as a **premise** of an argument about rights
 - b. Shifted focuss: weighting of reasons (greatest happiness) vs rights

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➤ Mill's On Liberty:

“..I forego any advantage..from the idea of abstract right as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions..on the permanent interests of man as a progressive being”