

H. L. A. Hart, “Are There Any Natural Rights?” *Philosophical Review* 64 (1955), 175-91.

Summary of argument: If there are any *moral* rights at all, whether special or general, there has to be at least one *natural* right: the equal right of all men to be free. This right implies both negative freedom from coercion or restraint except if used to hinder coercion or restraint and positive freedom to do any action that is not coercive, restraining, or injurious to others. (Each of these exceptions is actually implicit in its being an *equal* right.) This is a *natural* right because a) all individuals have it independent of any special relationship with each other (e.g. members of the same society), and b) it is not created by the voluntary actions of others (as are other rights).

Footnote 2 asks “Is the notion of a right found in either Plato or Aristotle?” The answer: “There is no place for a moral right unless the moral value of individual freedom is recognized”(54).

Ronald Dworkin, *Taking Rights Seriously* (1978), 150-205.

Summary of Chapter 6: The Rawlsian conception of justice as fairness rests not on his consideration of the original position (“hypothetical contracts do not supply an independent argument for the fairness of enforcing their terms”(151)), but rather on the deeper theory that all humans have a natural right to equal concern and respect. Acceptance of this right is a condition for admission to the original position. The original position serves as “an intermediate conclusion, a halfway point in a deeper theory that provides philosophical arguments for its conclusions”(158).

The argument proceeds through a discussion of 3 aspects of Rawls’ methodology: 1) Rawls’ equilibrium technique (moving back and forth between adjustments to conviction and adjustments to theory to achieve the best fit possible) presupposes a “constructive” model of reasoning from particular convictions to general theories about justice. 2) The idea of a social contract presupposes a “deontological” theory of justice. 3) The conditions of the original position suggest that the basic right underlying this theory is that of equal concern and respect.

This argument allows Dworkin to make some important distinctions:

Natural vs. constructive conceptions of justice:

Natural model: theories of justice describe an objective moral reality. They are not created, but discovered through the use of moral faculties.

Constructive model: principles of justice may not have a fixed, objective experience. Government officials have a responsibility to fit the particular judgments on which they act into a coherent program of action.

Theories produced on the constructive model may be either goal-based, right-based, or duty-based depending on what they take as fundamental.

Goal: “some state of affairs is a goal ... if it counts in favor of a political act ... that the act will advance or preserve that state of affairs”(169).

Right: “an individual has a right to a particular act within a political theory if the failure to provide that act, when he calls for it, would be unjustified within that theory even if the goals of the theory would, on the balance, be disserved by that act”(169).

Duty: “an individual has a duty to act in a particular way, within a political theory, if a political decision constraining such act is justified within that theory notwithstanding that no goal of the system would be served by that decision”(170).

“Any particular theory will give ultimate pride of place to just one of these concepts”(171). They can be distinguished by their treatment of individual choice and conduct. Goal-based theories are concerned with particular individuals only to the extent that they contribute to the social goal, which is chosen independently of individuals’ preferences (e.g. Aristotle’s perfectionist theory, which takes the goal of politics to be the creation of a culture of excellence). The individual is central to both rights-based and duty-based theories, but in different ways. “Duty-based theories are concerned with the moral quality of his acts, because they suppose that it is wrong, without more, for an individual to meet certain standards of behavior”(172). Rights-based theories value independence rather than conformity; codes of conduct are only valuable if necessary to protect the rights of others.

Natural (vs. legal?) rights: not the product of legislation, convention, or a hypothetical contract.

Summary of Chapter 7: Assuming “a man has a particular moral right against Government, that right survives contrary legislation or adjudication”(197). Only 3 possible justifications for a policy limiting the definition of a particular right: 1) show that the values protected by the original right are not really at stake; 2) show that a competing right (of another individual – not just the demands of a majority of society) would be violated; 3) show that the cost to society of not limiting the right would be far greater than the cost paid initially to grant the right. It is especially important to “take rights seriously” when society is divided, because they serve as the majority’s promise to the minority that their dignity and equality will be respected.

Richard Tuck, “The Dangers of Natural Rights,” *Harvard Journal of Law and Public Policy* 20(3), 683-93.

Summary of argument: Paradoxically, utilitarian philosophers have generally been strong supporters of the extension of civil rights in their societies, while the early rights theorists were explicit apologists for such practices as slavery and absolutism. This pattern is not accidental; except under special conditions, rights-based theories have the potential to lead to a weakening of the civil liberties protected by a society’s legal system. The 17th century rights theorists introduced the related ideas of natural rights as guarantees that the state must honor (or else the social contract is voided), and of individuals as sovereign, autonomous agents. This removed the uncertainty inherent in consequentialist theories of politics, which require a detailed account of the inner states of the individual members of society. But the privileging of certain rights (in particular, the right to self-preservation) as absolute can lead to the abandonment of civil liberties (e.g. the UK’s decision to suspend trial by jury in terrorism cases). To understand this argument, consider the difference between rights theorists and Utilitarians in their attitude towards risk: “a rights theorist wants to minimize risk, whereas a Utilitarian is prepared to gamble”(692). It is important to note that this argument does not refer to specific rights contained in the civil codes of certain countries, but rather to the “meta-political” philosophy of natural rights.