

## A STUDY OF THE RELATIONSHIP OF MODERN NATURAL RIGHTS AND INTERNATIONAL HUMAN RIGHTS

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**Abstract.** This essay seeks to study the relationship between the natural rights and international human rights. Thus, we first discuss the foundations and basic notions in natural rights and human rights and then we turn to the analysis of the concept of modern natural rights and international human rights. The concept of natural rights has its origin in ancient times and a divine perspective of man informed by religion and such figures as Thomas Aquinas are among those theoreticians who have analyzed the notion of natural rights within the framework of human divine nature. However, after Middle Ages, some thinkers like Hobbes and Lock provided social analyses of natural rights and due to which suggested that the roots of these rights should be sought for in the natural state of human social life humankind enjoys certain conditions that allow him to have access to natural rights. The international rights that have been stipulated in the Universal Declaration of Human Rights share deep roots with natural rights. In fact, through an evolutionary course the natural rights have evolved to rights of man and finally to human rights. Such principles as freedom, ownership and self-defense are equally underlined by natural rights and human rights. But in other cases which have been stipulated in the Declaration have gone beyond the level of modern natural rights and includes other different rights like the right of welfare, right of citizenship and some particular social and economic social rights that are of alternative nature as compared to modern natural rights.

**Introduction.** It is almost impossible to think of human life in individual form as isolated from other humans and surrounding environment insofar as right upon the formation of first communities among various ethnicities in primitive societies human beings have become involved in social relations and this in turn have led to the formation of the early forms of rights and obligations among humans. In fact, right and obligation have been associated with human social life from its very outset. In various perspectives of right and obligation that have emerged in human societies a variety of levels of right and obligation have been recognized by these societies. In other words, for some social groups more rights and for others lesser rights have been allocated. Regardless of sociological issues in philosophical arena the problem is discussed in an alternative form insofar as the philosophers have laid down particular sets of rights and obligations for humans based on their notion of human being as a whole. For example, some have adopted a divine notion of man and considered him to be a creature of the divine creator and accordingly they have allocated certain rights and obligations for man while some other philosophers have turned a blind eye to human divine primordial nature and instead insisted on human nature as such and argued for rights and obligations that have their origin in human nature qua human nature. Thus conceived, the issue of natural rights is a philosophical issue that is rooted in the mental notions of the thinkers and originates in their perspective of man. To put it otherwise, man enjoys different rights and assigned by various obligations due to a number of alternative notions of man in the context of social life. In the current essay we seek to study the relations of these philosophical notions with international human rights. Thus, we struggle to assay the question whether international human rights have any relationship with the so called philosophers' natural rights? What are the influence and effects of the philosophical notions of natural rights on the overall debate of human rights?

**Research Notions. Lexical Analysis of Right.** Lexically speaking, right refers to reality, counter notion of falsehood, necessity, and something's being set in its own place.<sup>28</sup> Also, right means correct, established, something that should take place.<sup>29</sup> Moreover, right has been defined as "something established that cannot be denied" and "what its implementation cannot be evaded" or "a judgement correspondent to the reality".<sup>30</sup> The legal term of right is translated in French to *droite*. Dr. Jafari Langeroodi has described one of the meanings of the term "right" as follows: "the power that has been bestowed to a certain person is called right. It is exactly in this very sense that this term is used in jurisprudence. Right as conceived in this sense is binding and should be protected under a set of laws".<sup>31</sup>

In other contexts, right has been taken in an absolute and unconditional sense without any further condition and in this sense it refers to the Divine Essence that is normally described as Truth instead of right. It is also featured as the judgement correspondent with the reality that refers to the words and beliefs of religions and denominations.<sup>32</sup>

<sup>28</sup> Tarihi, Fakhr al-Din (1996): *Majm al-Bahrayn*, edited by Seyed Ahmad Husseini, p. 146.

<sup>29</sup> Amid, Hassan (1990): *Dictionary of Persian Language*, p. 139.

<sup>30</sup> Dehkhoda, Ali Akbar (1994): *Dehkhoda's Lexicon*, vol. 6, p. 8022.

<sup>31</sup> Jafari Langeroodi, J. (1999): *Legal Terminology*, vol. 3, p. 1722.

<sup>32</sup> Tahanavi, Mohammad Ali (1996): *Kashaaf on Terms of Sciences and Technologies*, p. 921.

**Terminological Sense of Right.** Right as a legal term has been applied in various senses and legal experts have offered different definitions of it. Some have declared it to be an advantage and ability that is brought about by every society for its citizens and the true owner of this right is the one who takes advantage of it; for example right of fatherhood, right of childhood, and so on and forth. Thus conceived, right represents an advantage that belongs to everyone's life and existence and every creature expects it to be observed by others based on its overall existential situation.<sup>33</sup>

This privilege is endowed to an individual and supported by the law. In this sense, right will denote a type of power and will for its owner. Thus, right in the sense of legal power of a human individual over another individual or over his property or both whether the latter is material and tangible, e.g. house, or immaterial, e.g. loan. In legal sense, as we mentioned, "right implies one's power over something or someone"<sup>34</sup>

In legal parlance, right has been defined as "a person's sovereignty over something or someone..."<sup>35</sup> Some other legal experts distinguish between "right" and "law" and use right in two different senses in legal sphere. Accordingly, law represents a set of general and binding rules that are applied throughout a political community.<sup>36</sup> Thus conceived, right is depicted as one's competency for an action or a behavior in certain ways.<sup>37</sup> Some others have also suggested that by "law" we refer to a set of social rules that citizens in a society are required to observe them and the government feels obliged to implement them and their direct objective is creation of order and security in the society.<sup>38</sup> Another group of scholars propose a concrete and a mentally posited sense and believe that the latter sense means permission. In this sense when someone says that someone has right or owns right this means that no barrier lies before him and he has the right to use or leave it aside.<sup>39</sup>

In fact, right is itself a type of mental abstraction that exists for man qua man.<sup>40</sup> Then, there is no consensus among Muslim thinkers as regards definition of right. Some describe it to be of a unique content shared by numerous extensions in the sense of mental position, judgement or advantage while others see it a verbally unique concept that implies sovereignty or spiritual leadership.<sup>41</sup> Thus, some believe that "right" has a unique sense and nature in all cases and among its extensions and it is a mentally posited concept and no definition either in the form of a conceptual designation or a description can be provided for it.

**Historical Contexts of Natural Rights.** The most important achievements of the seventeenth century in philosophy of law – besides the organization of the laws of nations based on a scientific foundation and more explicit and decisive expression of social contract as a binding factor among the ruler and the ruled in a more conditioned form – was the natural rights of people that was relatively related to the theory of restricted sovereignty. While the medieval Catholic world defended the theory of natural rights in which the major emphasis is laid on the obligations of citizens before the ruler and their fellow citizens, (and even the secular natural rights of Samuel von Pufendorf, as we saw, was still presented in the form of social obligations), the individualist atmosphere of Europe after the Protestant reforms – an atmosphere, which was taking shape since the time of Ockham, started to emerge following the development of the theory of natural rights and inclusion of human rights before the ruler and his fellow men and this gave rise to the theory of natural rights.

R. H. Tawney in his renowned *Religion and Rise of Capitalism* as a defense of the subjective rights particularly in the domain of ownership noticed the fact that "social theory denies the general objective notion of economic fairness". He wrote: "law of nature was set as a condition for personal profit in economy by the medieval writers but in the seventeenth century the word 'nature' does not refer to divine ordinances rather to human approaches. Thus, individualism in this era alludes to natural rights as a reason for recognition of personal profit"<sup>42</sup>

It is a matter of fact that earlier in seventeenth century the Catholic Spanish jurists had even defended of the natural rights of the infidels as regards the ban of mistreatment and plunder but this new trend was something new. The aforementioned claim was indeed an objection to the cruel exploitation. Thus, in medieval tradition, according to Tawney, law of nature was referred to as a moral condition. In the new trend due to its being under the influence of teachings of nominalism<sup>43</sup> and protestant reforms both of which insist on the particular significance of the individual the emphasis point was shifted from natural law to natural right.

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<sup>33</sup> Bathaei Golpayegani, Seyed Mohammad Hashem (2004): *Islam and Human Rights*, p. 112.

<sup>34</sup> Jafari Langeroodi, J, *ibid*, vol. 3, p. 1669.

<sup>35</sup> *Ibid*.

<sup>36</sup> Heywood, Andre (2008): *Key Words in Politics and Law*, p. 38.

<sup>37</sup> *Ibid*: 193.

<sup>38</sup> Mesbah, Mojtaba (2012): *Fundamental Thoughts*, p. 225.

<sup>39</sup> Ebrahimi, Jahanbakhsh (2003): *An Outline of Human Rights*, p. 121.

<sup>40</sup> Mir Mousavi, Seyed Ali, Haqiqat, Sadeq (2012): *Principles of Human Rights according to Islam and Other Schools*, p. 130.

<sup>41</sup> Nabavyan, Seyed Mahmoud (2007): *An Investigation of the Meanings of Right*, p. 124.

<sup>42</sup> *Rise of Capitalism* (see ch. 5 n. 22), 183

<sup>43</sup> A philosophical doctrine according to which there is no objective extension for universal notions. Thus conceived, only particular objects have external existence and the only point of commonality between the objects is expressed via naming.

The first step towards this direction was indeed taken by William of Ockham even before reformation. (If Willy is right in his attribution of the oldest application of the term *ius* [right] in this sense to William of Ockham, according to Richard Tuck, this new application can even be dated back to 1329 when Pope's so called pontifical order of *Quita vir improbus*.) However, the true founder of the idea of natural right is Grotius. According to Tuck, in a book written in Dutch<sup>44</sup> on Netherlands' legal system Grotius "provided the first reconstruction of the real legal system in the form of rights instead of laws. As a result, this work represents the real world of all modern laws that are focused on the rights".<sup>45</sup> From this theoretical point of view, Grotius in his *magnus opus On the Law of War and Peace* (1625) suggested that the law of nature is basically an order to the necessity of preservation of peace based on respect to the rights of others and thus "rights allocated the whole body of the theory of natural law to itself".<sup>46</sup> The natural right of the punishment of the culprit citizen should also be accepted otherwise it cannot be assigned to the government by individuals.

Grotius attributes the right of self-defense to the nature.<sup>47</sup> The natural right of the punishment of the offender should be also accepted otherwise this right cannot be assigned by others to the government.<sup>48</sup> Grotius explains private ownership over objects in his own particular way but in his previous work entitled *De iure Praedae* he attributes this right to natural law too.<sup>49</sup> Such unavoidable affairs in life as choosing a spouse, buying the required items of life for a fair price, and the like, are subjects discussed by natural law.<sup>50</sup> This is also the case with the rights of parents versus their children,<sup>51</sup> and the right of the majority for overcoming the minority.<sup>52</sup> In the same way the law of nature is the source of validity of various ways of acquisition of wealth<sup>53</sup> as well as the basis of the rights resulted from the contracts and obligations.<sup>54</sup>

**Modern Approaches to Natural Right.** Historically speaking, the most important domains where the idea of natural law was active in through the eighteenth century was the domain of natural right. As we saw, the aforementioned idea did not play any role in the project of natural law in Saint Thomas and its origin can be traced back to William of Ockham however hard this work might be. Moreover, this idea has its roots in the objections of Spanish legal experts and theologians of sixteenth century against the way that statesmen treated the people in the new world. Nevertheless, Locke's theoretical formulation of this idea was in defense of the revolution of the late seventeenth century in England that impressed the majority of statesmen and political writers of eighteenth century. Locke's doctrines particularly his doctrines of the central role of property rights along with Cooke's influences in the domain of natural justice and rule of law were the main resorts of the outraged American colonies. These doctrines were famous in France too where Voltaire sought to take them to the fore. He refers to Locke as a philosopher who holds a high stature of Newton's scale and other natural philosophers. He also believed that human deliverance from the false ancient authoritarianism owed its emergence to them.

The idea that the debate of natural right in this century had been restricted to skeptics and radicals is totally baseless. Christian Wolff inferred a series of rights from human nature which were both equal and natural like freedom, security and self-defense. Edmund Burke not only insisted on keeping oneself away from philosophy he had also sufficiently learned from Locke insofar as he wrote in 1760s:

Protection and guaranteed enjoyment of our natural rights is the ultimate goal of a civil society; and then, all types of government are good as far as they are in the service of this single goal.<sup>55</sup>

In 1778 he described the right to make one's livelihood as a right that "has been endowed upon humankind with utmost seriousness by the creator of man" and revealed through the revelation.<sup>56</sup> Burke propounded the latter issue following the imposition of the restriction on Irish commerce by British parliament and in defense of the Irish people's right to make livelihood. Two years earlier in 1776, the royal announcement of Louis XVI against the restrictions resulted from the industrial companies system for the employees had announced that "right to work is the most sacred item among the property rights" and that "any law that would breach this fundamental right will prove baseless due to its inconsistency with the natural rights".<sup>57</sup>

But it was other voices – besides that of Locke – that served as the key source of inspiration for the arguments that were raised of human natural rights towards the late eighteenth century. One of the aforementioned voices belonged to Rousseau. Although his works relatively few discussions of the legal theory in its proper sense

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<sup>44</sup> Rechts gheleerdtheydt inleidinghe tot de Hollandsche (1619-20)

<sup>45</sup> Tuck, R. (1979): *Natural Rights Theories*, p. 66.

<sup>46</sup> *Ibid*: 67.

<sup>47</sup> *De iure belli et Pacis*, 2.1.3.

<sup>48</sup> *Ibid*, 2.20.1-2.

<sup>49</sup> *De iure Praedae*, 214; Tuck, *Theories* (see n. 53), 61-2.

<sup>50</sup> *De iure belliiert Pacis*, 2.2.21, 2.2.19.

<sup>51</sup> *Ibid*, 2.5.1.

<sup>52</sup> *Ibid*, 2.5.17.

<sup>53</sup> *Ibid*, 2.3.4ff.

<sup>54</sup> *Ibid*, 2.11.4.

<sup>55</sup> Burke, Edmund (1760): *Tracts on the Popery Laws*, in *Irish Affairs*, p. 39.

<sup>56</sup> Wesley, John (2010)

<sup>57</sup> Tocqueville, *Antien Regime* (see n. 4), 144.

and what is found of this in his works are of dubious nature his role in what can be described as the emotional part of natural rights is indispensable.

Rousseau's allusions to natural rights as a superior law that cannot be annulled by the positive law were merely ordinary remarks but his source of natural rights was not of the same state. According to Rousseau, natural rights are not dictated by people's hearts and have been founded upon principles that come before the reason, i.e. upon the principles of love of neither self rather of others.<sup>58</sup> Human individual has certain primordial natural rights though Rousseau resigns them to the community with the social contract in order to regain them in the form of rights resulted from statutes legislated by the community.<sup>59</sup> The key of all these issues is not reason rather the sensation insofar as that this latter is the basis of one of the most prominent words of Rousseau: "man has been created free but he is always and everywhere in chains".<sup>60</sup> One can state that the aforementioned phrases have been written under the influence of Locke's notion of natural rights.

As we mentioned earlier, revolutionary developments of America and France and also the official declarations of human rights that were issued following those two events are closely interrelated. Of course the pattern of England's Bill of Rights of 1689 already existed and also near to the revolution time the declaration of rights existed in the preamble of Constitution of 1776 of Virginia. But the common declaration of independence of states in the same year, i.e. 1776, is the basic document and notion related to America. Following this declaration Locke's notion of human natural rights and of course his theory of social contract had already been included in the declaration where it noticed the equality of all human individuals in their creation. It suggested that the creator has endowed them with a number of inalienable rights like right to life, right to freedom and right to happiness and the government is obliged to guarantee these rights. This institution is based on the satisfaction of the ruled and if their rights are breached the institution can be undermined and rebuilt in a new form or replaced by an alternative government. The Declaration of Rights that consisted of ten amendments was appended in 1791 to the US Constitution of 1787. Although it had been practically prepared based on England's Bill of Rights it did belong explicitly to the theoretical tradition inspired by Locke.

The Declaration of Rights of Man and Citizen of France adopted by the national assembly in 1789 does clearly belong to this general tradition. The aforementioned declaration considers man to be free and equal in rights and suggests that the goal of all political communities is protection of "the inalienable natural rights of humanity including freedom, property, security and resistance against the oppression" and it defined freedom as one's freedom for doing something whose undertaking will not make any harm to any other one. The principles of fair trial or observation of legal procedures were guaranteed. Punishing someone based on past criminal records was banned and the presumption of innocence was endorsed the chief principle. The freedom of belief, expression and communications was announced and property right was cherished as a heavenly and sacred notion.

At the same time, this renowned declaration was not merely an expression of an ideology of natural rights or an imitation of the ideal paragons of England and USA. The rights that were underlined by the mentioned declaration were all reminding the abuses of the past regime and related to the time of advantages, injustice, lack of tolerance and authoritarian government.

Announcement of one's personal freedom was an allusion to the Bastille jail and arbitrary imprisonments without trial. The announcements of freedom of expression and release was a token of Rousseau's *Emile* that had been set on fire by the execution agent and also the reminder of Rousseau's exile because of writing one of the most distinguished books of his time; announcements of freedom of belief were a reminder of the protestants who had been banished from their country and deprived of their civil rights. The adoption of natural right of ownership was against the old feudal extortions that had breached the property right and equality of citizens before the law. The equal access to public offices was an action against the prerogatives and discriminations of the upper class. The proper inclusion of tax was reminding all of the *Taille* that was paid exclusively by the third class general public.<sup>61</sup>

Although the doctrines of Locke and Rousseau had a deep effect on the declarations of USA and France the very structure of the declarations of USA and France had taken form in a way that they could guarantee the impossibility of formation of patterns of a special form of government, i.e. such governments that could have been easily identified as sheer examples of natural rights abuse.

### ***Human Rights***

Human Right or "Droits de l'Homme" consists of rights that a man enjoys them in view of his being a human. These rights are also inalienable; because regardless of our conduct we are not created for anything but human. In other words, every human individual only and only based on his being a human being deserves to enjoy his own rights. Accordingly, although individuals are rightly following a wide set of political and social obligations, human rights denotes an inalienable set of commodities, services and individual opportunities that should be observed by the individuals and the society in normal conditions.<sup>62</sup>

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<sup>58</sup> Social Contract, 1.2.

<sup>59</sup> Ibid, 1.6.

<sup>60</sup> Ibid, 1.1.

<sup>61</sup> Janet, p. (1887): *Historie de la science politique*, vol. 2.

<sup>62</sup> Sharifi, Hossein (2002): *Governments Confrontation and Globalization of Human Right*, Strategy, no. 23, p. 26.

To put it otherwise, humans regardless of where they live or what language they speak or what beliefs they have and regardless of their differences in view of their biological and social factors are all equal in their being humans. It is exactly this very common ground of all individuals in human society that should be taken as the criterion of their enjoyment of freedoms regardless of the conditions of time and place. The belief in dignity and equality of all human individuals is the very basis of what has come to be known as human rights in the contemporary society and like other basic principles it can be found in all cultures, civilizations, religions and philosophical schools and one cannot restrict it to a certain country. Then, international human rights or basic rights of mankind are a set of advantages that have taken form in view of human stature. The existential philosophy of international human rights has been the promotion of the status of these rights so that via observation of these global principles across the world all human individuals can enjoy these advantages in an equal fashion. The end of these rights is respecting the human content of all human individuals:

- 1- Right to life
- 2- Prohibition of torture
- 3- Prohibition of discrimination
- 4- Right to work
- 5- Right to make a family
- 6- Right to freedom of expression
- 7- Right to education and many other rights that are required for human social life as well as perfect development of all aspects of his personality in the form of the triangle of freedom, equality and security.<sup>63</sup> Professor Boudvan has defined human rights in the Dictionary of International Law as follows:

“International human rights consist of a set of privileges that have been endowed upon human individuals in view of human status. The philosophy of existence of human rights has been the promotion of the stature of these rights so that via observation of its codes throughout the world all citizens to take an equal advantage of these privileges.”<sup>64</sup> Human rights are grounded in a set of principles based on which mankind can enjoy a decent life in various forms. These principles which in the outset seem to be the product of philosophical, ethical and religious thoughts and seek always to fulfill human prosperity help the individual and social relations to be flourished in internal and international legal system. For these grounding principles, one can refer to the first Article of the Universal Declaration of Human rights that suggests: “all human individuals are born equal and share an equal stature and right”. Human principles of dignity, liberty and equality not only are considered as the inspiring source of rights rather they endow value and content to legal principles and they found direct and indirect rules.<sup>65</sup>

**Natural Law.** Natural law has different definitions that seem to reveal a certain aspect of it for understanding of the concept of natural right some of which are as follows:

Some dictionaries of political terms have defined the concept of natural law as follows:

- A) Natural law represents the divine will over the world.
- B) Moral principles have their roots in the very structure of the world.
- C) Natural law is part of the necessary infrastructure of every legal system.<sup>66</sup>

Thomas Aquinas is one of the thinkers who have offered a number of theories of the natural law. He defines natural law in the following form: “this type of involvement of eternal law in the rational creature is called natural law.”<sup>67</sup>

There are various inclinations in human nature including the inclination towards reproduction and due to human intelligent nature his interest in the search of truth is the basis of human behaviors that have natural inclinations as their good. Then, man is obliged to protect his own life and health and suicide and carelessness are considered errors and evil and due to human natural inclination towards the search for truth he is obliged to follow truth and God as his own ultimate telos so that he may reach him. Therefore, moral obligations are dictated by reason though they are directly based on human nature itself. Then, moral rules are both rational and natural. These different inclinations constitute various aspects of human nature and the corresponding laws with the laws of nature.<sup>68</sup> Thus conceived, natural law has the following features:

- 1- Since natural law is based on human nature it is essentially related to things that are necessary for humans. For example, man is in charge of protecting his own life and this is a necessity. However, it is him who decides with what method to protect his own life or eat which food or wear which cloth and the like.
- 2- Since human nature is shared by all human individuals this shows that natural law has its own origin in human nature as a whole and can be found in all humans.
- 3- This reality demonstrates that this law is not changing because human nature is essentially one.
- 4- Finally, it is due to this very reason that the origin or context of emergence of natural law should be sought for in human nature itself and humans know this.

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<sup>63</sup> Zamani, Seyed Qasem (2006): International Codes of Human Rights and the Detainment of Financial Convicts in Iran, p. 75.

<sup>64</sup> Ziaei Bigdeli, Mohammad Reza (2002): Human Rights in Twentieth First Century, p. 157.

<sup>65</sup> Hashemi, Mohammad (2005): Human Rights and Basic Liberties, p. 201.

<sup>66</sup> Robertson, David (1993): Dictionary of Modern Politics, p. 720.

<sup>67</sup> Enayat, Hamid (:): Foundations of the Political Philosophy in the west, p. 322.

<sup>68</sup> Ansari, Morteza (1995): Faraed al-Usul, p. 18.

After an examination of some basic concepts in this study in this part of the research we turn to analysis of key concepts.

**Analysis of Some Relevant Research Concepts. Origin of Natural Right.** Natural right has two origins one of which is natural law and the second is human nature. Then, if we want to analyze the origin of natural right we should conduct this analysis as follows:

**Natural Law as the Origin of Natural Right.** Natural law plays a key role in the formation natural right. Aquinas has a special perspective of natural right that have been interpreted in various forms. A group of commentators are of the belief that from his point of view, natural right is acquired through natural law while another group believe that from his point of view, natural right cannot be deduced from natural law because according to Aquinas, animals do also have certain natural rights. However, he believes that natural law exclusively belong to man.<sup>69</sup>

Nevertheless, it seems that firstly he does not speak so much of the natural rights and only have indicated the right to life and right to property in cursory fashion; i.e. his discussion of natural law and inclinations. Secondly, he sets the natural inclinations that exist in animals the basis of natural rights that belong to animals according to instinct. Animals answer their own needs based on instinct. But this is not the case with humans as they address their own needs in another forms that include mystical and divine aspects. Accordingly, one can state that the origin of natural right in man is indeed his needs that have their origins both in his human and animal aspects. Then, one can state that according to Thomas Aquinas, natural law is considered as one of the pillars of natural right.

Analytically speaking, one can say that divine laws that are the major root of natural right have been underlining the humanity of man as one of the inseparable members of his own existence and due to this reason man should pay careful attention to both features in the execution of his own natural right. Therefore, the chief component of natural law that is divine will should be mindful of the fact that man is of two aspects one of which is divine aspect and the other is animal aspect.

**Human Nature as the Source of Natural Right.** One of the other principles that can be recognized as the source of natural right is human nature which plays a major role in the formation of natural right. Some of the proponents of the theory of natural right have sought for its origin in human nature and some have considered human nature as an equivalent of human primordial nature. One of those who have referred to human nature as the source of natural rights of humans is Thomas Hobbes who suggests: "... since humans live in a state of war and in such a state everyone follows the orders of his own reason and is allowed to make use of all available items to protect his own life against his enemies. Thus, such a state cause man to enjoy rights of everything including his own body and life."<sup>70</sup>

Moreover, in another place as an endorsement of human aggressiveness in a natural condition in dealing with his human fellows he suggests: "we do not blame humans for their nature. Human natural desires and emotions are not sinful as such. Moreover, those actions that are resulted from these inclinations and emotions will never represent any sin until no law has been set against it."<sup>71</sup>

Therefore, it seems that in the thought of Hobbes the reason of eruption of war against all has its own origin in human nature that include competition, fear, dignity all of which force man to act in a way that would lead him to fame and honor and these actions are the natural rights indeed that have their own origin in human natural inclinations and cannot be blamed. Another thinker who regards human nature the source of natural right is Kant. But he uses natural right as an equivalent of the primordial right. This is revealed from the definition that he provides from the right of liberty or volition. He defines it as follows: "liberty or free will is justified as long as it can stand in peace with the liberty of others as a maxim and in this sense it is a basic right that everyone is entitled to enjoy it as a human individual."<sup>72</sup>

Kant's definition endorses the originality of liberty as one of the basic foundations of natural right and accordingly one should say that liberty is one of the chief principles of natural right in Kant's ideas. of course, it seems that Kant's view of the originality of liberty is more due to the fact that liberty is a primordial category and humans are inclined towards it out of their primordial nature. Then one of the basic foundations of natural rights is this. Finally in modern perspective of natural right one or a number of features can be regarded as the source of natural right. The features that are the source of right for man include reasoning, human ability to live as an independent creature and competency for making free choices. Of course, some may add other features including sensory perception or sensual capability or pain. These latter features have their origin in human character as discussed in certain theories.<sup>73</sup> Of course, the major problem of such theories lies in the fact that they cannot enumerate the features that are the source of endowment of right upon human in exact fashion and express their reasons. On the one hand, if these features are outlined in an extensive fashion they will cover animals while, on the other hand, if they are described without details not only it will not entail any reason rather it will be also applied to

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<sup>69</sup> Berent, A. S. (1997): Liberty, Right and Nature, p. 94.

<sup>70</sup> Hobbes, Thomas (2001): Leviathan, p. 160.

<sup>71</sup> Ibid: 159.

<sup>72</sup> Kant, Immanuel (1996): The Metaphysics of Morals, p. 30.

<sup>73</sup> Hegel, Fredrich (1999): Elements of Philosophy of Right, p. 532.

the insane and infants. As a result, these people may exit human division. Then, it seems that the theories discussed in this area suffer from insufficiency.

Generally speaking, one should say that the major shortcoming in the area of natural rights and human perspectives is the lack of a comprehensive approach to man that has failed to provide a correct notion of the source of natural right and it seems necessary a comprehensive human approach to be studied.

**Domain of Natural Rights.** The theories that have been offered of natural rights have accepted this fact without further details that a sovereign political government requires to pursue natural rights somewhere beyond the sphere of state of nature so that it can help the citizens to reach their natural rights. This has been noticed as a criterion of legitimacy for every political system. In other words, if the ruling party seeks to provide the ground for better securing of human natural rights this party's rule is legitimate and everyone should follow it but if it oppresses the citizens the latter should rise up against it and force it to leave.

Some thinkers, in fact, suggest that observation of natural rights and the divine laws of the church as the basis of a political system's legitimacy. The church's involvement in legitimacy problem could have been effective in a historical era but it didn't work during medieval times.<sup>74</sup>

On the other hand, despite contradictive nature of the ideas of Hobbes one can argue that he was defending the formation of a dictator government because he had the belief that everyone has the natural right to protect their body and soul. However, in a political society other individuals resign this right so that the ruling party to handle this protection in a collective fashion.<sup>75</sup> Nevertheless, one need to take it into careful attention that in this case an absolute right has been given to an individual and he can make use of this right as he likes in as regards the body and soul of humans. As a result, if he executes someone he will have no escape because how someone who has been condemned to death can evade the execution. Moreover, Hobbes has clearly noted that such punishments are not considered cruel because they have not breached the natural rights of the ruler.

Some other thinkers also prescribe the public revolt as a way for prevention of the rule of despotism.<sup>76</sup> Here the point is that if the ruling power uses its rights it can thwart the possibility of all types of revolt. Then is there any other way to divest the ruling party of these rights? Separation of powers does not offer any solution to this problem either because the possibility of collusion remains.

As to the expanse of natural right in the state of nature due to intricacy and wider variation of tricks that are used by humans in their behaviors we cannot merely suffice to rational rules for identification of the limitations of natural rights. For example, one cannot solve this problem with noting the general maxim that everyone has the natural right to make use of his own property unless this use would make a harm to someone. Then an efficient solution must address all possible tricks. It should also be able to cast light on the framework of the natural rights and this is not within human jurisdiction. The one who has founded these systems as a whole cannot determine a framework for it and human actions in this regard have failed so far.

Of course, what has been said in this part is related to the identification of laws and rights but for correct implementation they need to form an executive power based on divine doctrines that can monitor the people and the society and by this monitoring it can prevent from the emergence of a despotic system. Thus no abuse of power will be possible under its supervision.

**Types of Natural Rights:** Some thinkers in a seemingly correct classification consider the right of survival as the first natural right according to rational principles. However, they have also included this basic right among the items that should be deduced from the right to property that includes life, freedom and properties.<sup>77</sup> Accordingly, one should say that the first human right is the right to property that includes the right of survival, freedom in using the natural requirements of survival and acquisition of wealth. Finally, it is suggested that natural right can be divided into primary and secondary natural rights.

**Primary Natural Rights.** The right of property in the domain of natural rights is one of the most important cases that is categorized as an example of the primary natural rights. According to some philosophers, the source of human ownership is his own work and effort because they believe that firstly, man is the owner of himself and his own faculties that are all God-given and man does not play any role in it. Secondly, due to their use in building the world and taking advantage of divine bounties that have been given to humans in an equal fashion ownership over the goods and products takes form.<sup>78</sup>

Accordingly, one should say that the right of property (ownership) has two natural and unnatural aspects whose natural aspect is the result of human God-given force that has been endowed upon him by God but as to human domination over the nature that is an acquired feature and the result of human initiation and effort we cannot speak of ownership. Rather human domination over nature is the product of relations that are defined by the society and stir these relations and allow man to take advantage of the surrounding environment. Then, man can only take advantage of nature based on certain social rules and thus this exploitation is not surely a natural right for man.

<sup>74</sup> Bernet, A. S., p. 98.

<sup>75</sup> Hobbes, *ibid*, p. 51.

<sup>76</sup> Locke, John (1959): *Two Treatises of Government*, p. 130.

<sup>77</sup> *Ibid*, p. 133.

<sup>78</sup> *Ibid*, p. 146.

The other natural right is the right of freedom that is embedded in the right of property. Some thinkers believe that natural freedom and freedom in the society are two different categories. Thus, based on the definition that is offered by them, natural freedom features conditions in which man is delivered from all super-terrestrial power and only his works are evaluated by the natural law.<sup>79</sup>

Of course, one need to take it into account that this freedom is a potential freedom that has not reached any actuality and in-born freedom is applicable to all human individuals. Then, as for example, insane people never touch actual freedom and infants should be actualized under the supervision of the parents or all competent people. Then, freedom comes across rational limitations. That is to say, man is free in view of his rational nature.

**Secondary Natural Rights.** The secondary natural rights are as follows according to John Locke who has coined the classification of natural rights into primary and secondary:

- 1- Right of equality in taking advantage of primary natural rights
- 2- Right of judgement of one's own actions and their consistency or inconsistency with natural law
- 3- Right of prevention from the violation of natural law and right even if with the use of force
- 4- Right of judgement of the violators of natural law and right and exertion of punishments regarding them.

Locke has spoken of these rights in various cases and insisted that in the state of nature the implementation of natural law is at the hands of every human individual and everyone has the right to punish the violators and if no one has such a right the natural law will turn futile. As for example, one can take the following phrase into account: "when humans are born they have the right of freedom and unrestricted right of enjoyment of their natural rights and advantages in an equal fashion. In other words, all human individuals have the right not only to take advantage of their properties before the harms posed by others rather they can judge the violators of their rights."<sup>80</sup>

Accordingly, one should state that the secondary natural right in this categorization is more concerned with the right of defense before the encroachments that have been made to the primary natural rights on which the thinkers insist.

These include the defense and punishment of someone who has violated another man's rights.

**Types of Human Rights.** In the domain of human rights various types have been mentioned and analyzed that we will discuss in this part of the discussion:

**Affirmative and Negative Human Rights.** In a normal current categorization human rights are divided into affirmative and negative but one needs to take it into account that there are various readings of affirmativity and negativity of rights.

The first group consider such rights as right of life, freedom, property and equality to be negative in their nature but they call social and economic rights as well as rights related to human prosperity like the right of security to be affirmative. Some believe that negative rights are defined in view of the services that are offered by government including the security for social free activity. However, there are still other types of rights that require political activity and have been considered after world war more than before and they can be called social and political rights related to human prosperity or welfare.<sup>81</sup> The second group believe that each right is negative when it is seen through the prism of the obligation that others have regarding it while when they are considered in view of their owners they reveal their affirmative side. For example, human individuals enjoy the right of freedom and property. This right does have both negative aspect and it consists of the fact that other should not pose any restriction to one's freedom. In other words, people have the right to act freely and enjoy an equal right of life and equality.<sup>82</sup>

**Graded Human Rights.** In another categorization human rights are divided into three grades that consist of:

First grade: traditional freedoms and citizenship freedoms including religious tolerance, freedom from arbitrary detainment, freedom of expression, freedom in elections and so on and so forth.

Second grade: social and economic rights that include education, right of housing, health, occupation and a completely standard life.

Third grade: those rights that are concerned with all steps of society like right of peace, preservation of environment, and economic development.<sup>83</sup>

Since in the past the language of law was an individualist language in the sense that it has always spoken of the right of individual life, freedom, and equality before the state, then the third type of human rights have provoked the minds of some people and caused this question to be raised that if the common and collective interests are considered human rights?

Some have answered this question as follows: it is correct that economic development, peace and preservation of environment are not issues that would be related to the individuals but at least some of these conditions for attainment of the individuals to their personal rights seem necessary. For example, in war conditions individual rights of humans cannot be secured. On the other hand, it is correct that some of these conditions have clearer social and common nature like the preservation of environment and peace and so on and so forth, but some of them like economic development reveal explicit involvement of individual interests. Anyway, whether economic development

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<sup>79</sup> Ibid.

<sup>80</sup> Ibid: p. 124.

<sup>81</sup> Mobasheri, Asadollah (1994): Human Rights, p. 21.

<sup>82</sup> Ibid, p. 26.

<sup>83</sup> Goodin, E. R. (1999): A Companion to Contemporary Political Philosophy, p. 518.



is a collective movement or partially individual there will be no logical problem if we consider it part of human rights.<sup>84</sup>

**Natural and Human Rights.** Natural rights and human rights are interrelated and this interrelation has to be discussed. Thus here we will turn to the particular interrelation that exists between these two types of rights.

**Comparison of the Origin of Natural and Human Rights.** The origin of natural rights and the origin of human rights have similarities and differences that will be noted in this part of the research. As it was mentioned earlier, natural rights have two sources in the sense that part it is resulted from natural laws while the other part has its origin in human nature both of which are of course consistent with human nature as a whole.

Human rights is indeed the evolved form of natural rights that in some cases have been considered in this way and described as follows: “in seventeenth century these very rights have been discussed as natural rights that are earned from human individual nature. In the course of centuries this term has changed from natural rights to human rights. This terminological transformation is itself an indication of the scope of these rights that include the natural right as such and in some cases these rights are possible to become actualized in a welfare society.”<sup>85</sup>

In some sources it has been noted that: “human rights is a new political term that has been coined after the WWII but in fact human rights are the continuation of natural rights in the seventeenth and eighteenth centuries and later they become known as rights of man or in English human rights.”<sup>86</sup>

Generally speaking, according to what has been quoted of human rights as well as natural rights, one can state that the basis of human rights should be sought for human nature itself without the interference of government, state, party, race or any other social institution and no other contract is involved in their emergence. These human rights owe their title to human primordial nature. They are also fundamentally irreligious and secular and defined on the western notion of humanity. Therefore, studies of human rights have relatively divorced from divine theories. On the other hand, in a comprehensive approach one should say that the origin of human rights is indeed the perspective of natural rights. From this perspective human rights and natural rights share their origins.

**Right-centeredness in Natural Rights and Human Rights.** In the part related to natural rights, as we mentioned in previous parts in a detailed fashion, the extensions of natural right consist of: right of life, freedom, equality, property and other perspectives of secondary natural rights like the right of defense and punishment and damage compensation. To study human rights and natural rights in a comparative fashion one needs to refer to the original literature on human rights the major one of which is the Universal Declaration of Human Rights. Some of the key elements of natural rights like freedom have been noted in the Articles one to three of the Declaration. The right of ownership and property has been noted in the Article 17 of Universal Declaration of Human Rights as well as some secondary rights that are more concerned with the protection of rights have been outlined in the Articles ten to twelve. Some other articles of the Declaration also provide explanations of the right of freedom. For example, one can refer to the Articles 13, 15, 19, 21 and 23. Of course in the Article 25 the right of children has been noted but in other cases the economic and social rights have been noted which are indirectly related to natural rights.<sup>87</sup>

Accordingly, one needs to state that the majority of the principles that have been stipulated as regards the human rights are in some way rooted in natural rights but in some cases human rights have gone beyond the ordinary level of natural rights and include those cases that are not comparable with natural rights. It seems that if we have a vision based on an evolutionary movement through which human rights have reached their fruition one should say that human rights have evolved out of the natural rights of course in an intricate and subtle form. Also due to the biding sanctions forced by the international global institutions that are in charge of securing human rights the latter has developed in most developed countries and the international community as a whole has become more sensitive of this issue.

**Conclusion.** In general, one should say as regards this study that natural rights is one of the most significant rights of human life that can be established merely based on human nature. In fact, humans enjoy some of these so called natural rights from their very birth. These rights include the right of life, ownership, freedom as primary natural rights and the secondary natural rights that are majorly concerned with protection and defense of primary natural rights of humankind. Natural rights for man cover important aspects. In fact, it plays a key role in human life and man defines other rights based on it. The origin of these rights is natural rights that have been built based on human primordial divine nature. Thinkers and theoreticians in the field of natural law believe that man enjoys natural right regarding his own surrounding society and since he does not power to exert this right he should let the government implement. Of course, some thinkers believe that this right can be exerted in the form of public revolt. However, they have not clearly specified that if this revolt is suppressed by the government what will be the next solution. For this reason, there should be a model of government that can ensure the necessary vital natural rights. It should be also noted that human rights have their roots in natural rights and this can be discerned via exact consideration of the Universal Declaration of Human Rights. In other words, such rights as the rights of life, ownership and legal protection can be traced back to the natural rights. Human rights have sources that are closely related to the sources of natural rights. One can say that human need for these rights and establishment of a life

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<sup>84</sup> Waldron, Jermy (1993): *Liberal Rights*, pp. 339-345.

<sup>85</sup> Martin, S. L (1995): *The Encyclopedia of Democracy*, p. 573.

<sup>86</sup> Raphael D. O. (1990): *Problem of Political Philosophy*, p. 104.

<sup>87</sup> Johnson, Glen (1978): *Universal Declaration of Human Rights*.

based on justice and fairness cause the formation of perspectives of human rights among human beings and this is mostly overlapped by natural rights. The implementation of natural rights and human rights is carried out in different forms in various societies. But the point shared in most of them is that both in human rights and natural rights only normal people can defend their rights while others like insane people and infants cannot defend their rights and society act based on certain measures in this regard that make one eligible for having such rights.

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