

Rights: Meaning and Theories

What Are Rights?

Rights refer to justified claims or entitlements that individuals possess, grounded in law, moral principles, or social consensus. They provide individuals with the legitimate authority to act or to be treated in specific ways, and they are essential for protecting dignity, ensuring freedom, and promoting equality in society.

Rights as the Basis of Justice and Democracy

In political thought, rights are often seen as the cornerstone of justice and the backbone of democratic governance. They **guarantee the space for individuals to develop their potential**, express their views, and participate in collective decision-making. As political philosopher **H.L.A. Hart** observed, rights are "**protective fences**" around individuals, preventing unjust intrusion by others, including the state.

For example, in democratic societies like **South Africa post-apartheid**, the new constitution enshrined a strong set of fundamental rights—including socio-economic rights—to heal past injustices and promote genuine inclusion.

Similarly, the **Indian Constitution**, through its Fundamental Rights (Articles 12–35), ensures political freedoms, safeguards against discrimination, and upholds equality before law.

Protection Against Arbitrary Power

Rights also function as moral and legal limits on power. In totalitarian regimes like **Nazi Germany**, where rights were systematically denied, individuals were reduced to mere subjects of the state's will.

In contrast, liberal democracies ensure that **government actions remain accountable** to rights-based frameworks. The **American Bill of Rights**, for example, was designed to **restrain government overreach and secure liberties** such as freedom of speech and religion.

Conditions for Individual Development

Rights are **not only protective but also enabling**. They provide the necessary conditions for individuals to flourish. **T.H. Green**, a British idealist philosopher, argued that **rights are not natural but are created by society to promote common good**. According to Green, **rights enable individuals to develop their moral capacities in a supportive social environment**.

For instance, the **right to education** empowers individuals not merely to gain knowledge but to participate meaningfully in society, improve their economic

prospects, and engage as responsible citizens. Countries like **Finland** have demonstrated that universal access to quality education—as a right—leads to more equal, informed, and participatory societies.

Contextual and Evolving Nature of Rights

Rights are not fixed or absolute; they **evolve with changing moral understandings, social structures**, and political struggles. What is considered a right today—like digital privacy or gender identity rights—may not have been recognized in the past. The **Universal Declaration of Human Rights (1948)** marked a turning point in global consciousness by articulating a shared set of standards that apply to all human beings, transcending national boundaries.

In contemporary times, the recognition of **LGBTQ+ rights** in many democracies, including the legalization of same-sex marriage in countries like **Canada, New Zealand**, and **Taiwan**, reflects the dynamic and expanding nature of rights based on principles of dignity and inclusion.

Theories of Rights

1. Natural Rights Theory

Core Idea: Rights Inherent to Human Nature

The Natural Rights theory is one of the oldest and most influential doctrines in political thought. It asserts that certain rights are **inherent, universal, and inalienable**.

They belong to individuals **simply by virtue of being human**, not because they are granted by any government or legal system. These rights are seen as prior to, and morally superior to, any form of state authority.

Locke's Theory: Life, Liberty, and Property

English philosopher **John Locke** was the foremost advocate of natural rights in the 17th century. In his *Two Treatises of Government*, Locke argued that in a hypothetical "state of nature" (a condition without formal government), individuals were free and equal, enjoying natural rights to **life, liberty, and property**.

However, to safeguard these rights more effectively, **individuals agreed to form a political society governed by mutual consent**. For Locke, the **primary role of government** was to **protect these natural rights**, and if a government violated them, people had the moral right to **revolt**.

Locke's views directly shaped the **American Declaration of Independence (1776)**, where **Thomas Jefferson** famously declared the rights to "life, liberty, and the pursuit of happiness" as self-evident. Similarly, the **French Declaration of the Rights of Man and Citizen (1789)** reflected the natural rights framework, asserting

liberty, property, security, and resistance to oppression as fundamental human entitlements.

Global Influence: Foundational to Liberal Democracy

The theory of natural rights became a **philosophical foundation for liberal democracies** worldwide. It played a key role in shaping constitutions that emphasize individual liberty and the rule of law. For example:

- In **India**, the influence of Locke's thought is visible in the **Fundamental Rights** (Articles 12–35) of the Constitution. While these rights are codified by the state, their underlying justification—dignity, equality, and freedom—echoes the natural rights tradition.
- In **South Africa**, the post-apartheid constitution (1996) enshrines both civil-political and socio-economic rights, drawing upon the principle that rights are not a privilege but a birthright of every human being.

Contemporary Relevance and Criticisms

Today, the spirit of natural rights lives on in **international human rights frameworks** such as the **Universal Declaration of Human Rights (UDHR)**. Article 1 of the UDHR declares: "All human beings are born free and equal in dignity and rights."

However, natural rights theory has also faced **philosophical criticisms**. Thinkers like **Jeremy Bentham** dismissed natural rights as "nonsense upon stilts," arguing that rights only have real meaning **when backed by positive law**. Others point out that natural rights theory, by focusing on abstract universality, sometimes **overlooks historical** and social inequalities that demand affirmative state action.

2. Legal/Positivist Theory

Core Idea: Rights Are Created by Law, Not Nature

The Legal or Positivist theory of rights argues that **rights are not inherent in human nature** but are **creations of law**. This perspective is rooted in the belief that **only the state, through legal authority, can grant and guarantee rights**. Unlike natural rights theorists who see rights as pre-political, legal positivists insist that without formal laws, rights have no real existence or enforceability.

Key Thinkers: Jeremy Bentham and John Austin

The most famous critic of natural rights, **Jeremy Bentham**, called them "**nonsense upon stilts**," arguing that unless rights are **written into law**, they are meaningless. Bentham, a utilitarian philosopher, believed that **laws should aim at promoting the greatest happiness for the greatest number**, and rights should be granted or denied based on this principle of utility.

John Austin, a legal positivist, reinforced this idea by stating that rights are **commands of the sovereign**, backed by the threat of sanctions. For Austin, law is

distinct from morality; a right exists only if it is **recognized, defined, and enforced by the legal system**.

Rights Depend on State Recognition

This approach shifts the focus from moral claims to **legal enforceability**. According to positivism:

- No right exists unless the **sovereign authority** acknowledges it.
- The **validity of a right** depends on whether it conforms to the procedures and structures of law-making in a political system.
- **Judiciary and legislative bodies** become central institutions for the creation, interpretation, and protection of rights.

Case Studies Illustrating Positivist Rights

- The **Supreme Court of India's ruling in Vishaka v. State of Rajasthan (1997)** shows how judicial interpretation can create legal rights even in the absence of legislative action. The court used international conventions (like CEDAW) to develop guidelines to protect women from sexual harassment at the workplace, which were later codified in the **Sexual Harassment of Women at Workplace Act (2013)**.
- In **South Korea**, legal rights related to data privacy and surveillance have emerged primarily through legislation such as the **Personal Information Protection Act (2011)**—highlighting how rapidly evolving societal needs are translated into legal rights through state action.

Criticism of Legal/Positivist Theory

While legal positivism provides **clarity and enforceability**, it has significant limitations:

- It risks becoming **morally indifferent**—since even oppressive laws (e.g., apartheid in South Africa, racial segregation in the US) can create 'legal rights' that violate fundamental human dignity.
- It may **exclude vulnerable groups** who lack access to legal mechanisms or political representation (e.g., stateless refugees or undocumented migrants).
- In societies with weak rule of law, legal rights may exist on paper but lack actual implementation.

3. Historical Theory

Core Idea: Rights Emerge from Tradition, Not Abstraction

The Historical Theory of rights emphasizes that rights are **not born out of reason or law alone**, but **evolve gradually through historical experience**, customs, and established institutions. Rights, in this view, are **not universal moral claims**

applicable at all times and places, but are **products of a community's unique historical journey**.

Key Thinker: Edmund Burke

The leading proponent of this theory, **Edmund Burke**, famously criticized the French Revolution's Declaration of the Rights of Man as too abstract and disconnected from the lived realities of society. He argued that **true rights are not invented by revolutionaries** but are **inherited from past generations**, preserved through **custom, tradition, and tested institutions**. For Burke, **the stability of society depends on continuity**, and sudden imposition of universal rights disrupts this fabric.

Features of the Historical Theory

- Rights are **culturally specific** and shaped by **social and historical context**.
- They are often **group-based** or **community-based**, rather than solely individualistic.
- Rights are **gradually recognized** through **historical struggles**, not declared in a single moment.

Examples and Applications

This theory provides a valuable lens to understand the **rights of indigenous peoples**, marginalized ethnic groups, and traditional communities, whose claims cannot be fully appreciated through purely legalistic or universal frameworks:

- In **India**, the **Adivasis** (tribal communities) claim rights to **forest land, culture, and governance systems** not through modern legal charters, but through **ancestral use, oral tradition, and customary laws**. These rights have been historically embedded in their identity and way of life. The **Forest Rights Act (2006)** in India recognizes such historically rooted claims by acknowledging **community rights over forests and natural resources**.
- In **Canada**, the **First Nations** peoples' land rights are based on **historic treaties**, oral agreements, and customary use. The **Canadian Constitution (Section 35)** explicitly affirms "**existing aboriginal and treaty rights**," which are not newly created but recognized as **evolving through history**.

Criticism of Historical Theory

- It may **justify the status quo**, even when it is unjust (e.g., feudal privileges, colonial rule, patriarchy).
- It risks **excluding progressive change**, especially when rapid transformation is needed (e.g., gender rights, LGBTQ+ rights).
- Critics argue it can be **elitist**, privileging the rights of dominant historical actors over oppressed or colonized groups.

4. Marxist Theory of Rights

Core Idea: Rights Are Rooted in Class Structures

The Marxist theory of rights offers a radical critique of liberal and capitalist societies. Marxists argue that what are often celebrated as "universal" rights—such as the right to private property or freedom of contract—are, in reality, **instruments that serve the interests of the dominant capitalist class**. According to Karl Marx, rights in bourgeois society are **formal and illusory**, providing **legal equality without addressing real material inequality**.

Karl Marx's Critique of Liberal Rights

Marx's central argument, especially in his essay *On the Jewish Question (1844)*, was that **liberal rights atomize individuals**, separating them from the social and economic structures that shape their lives. He viewed rights such as private property, freedom of contract, and individual liberty as **bourgeois constructs** that **mask deep economic disparities**. For example, the **right to property** in capitalism often means the right of the few to own the means of production while the many are forced to sell their labor.

Core Features of the Marxist Theory of Rights

- Rights are not neutral or universal; they are **class-based** and reflect **historical relations of production**.
- True rights can only emerge through **social revolution**, when class exploitation is abolished.
- Emphasis is placed on **collective rights**, especially over economic resources, rather than on **individual liberties**.

Case Studies and Examples

1. **Right to Work Movements in India**: Campaigns such as the **Right to Employment** under the **MGNREGA Act (2005)** reflect the tension between formal legal rights and substantive economic rights. Marxist theorists often argue that **state-guaranteed employment schemes** move closer to **real equality** than abstract freedoms.
2. **Occupy Wall Street (USA, 2011)**: The slogan "We are the 99%" challenged how the capitalist system and liberal democracy **protects the economic elite**. The movement questioned whether rights under capitalism genuinely serve all or merely **institutionalize inequality**.

Criticism of Marxist Theory

- It is often **dismissive of individual civil liberties**, which can lead to authoritarianism, as seen in some communist regimes.

- Marxist regimes sometimes **failed to protect political rights**, prioritizing state control over genuine participation.
- Critics argue that **class is not the only axis of oppression**—issues like caste, gender, and ethnicity may be sidelined in classical Marxist frameworks.

5. The Will and Interest Theories of Rights

The Will and Interest theories are two major philosophical approaches that explain **what it means to have a right**. Both focus on the **individual**, but they offer different answers to the question: *What makes something a right?*

The Will Theory focuses on **choice and control**, while the Interest Theory focuses on **human welfare and protection of important needs**. Each theory is influential in shaping how modern societies understand, distribute, and defend rights.

I. Will Theory of Rights

(Also called the Choice Theory)

Core Idea: The Will Theory says that a right is something that gives a person **power over others in a legal or moral sense**. It sees rights as **instruments of personal freedom**, helping individuals make choices, form agreements, enforce rules, or even forgive wrongdoing. The essential point is that **the right-holder has control**—they can use the right, not use it, give it to someone else, or give it up entirely. Rights, in this view, are **tools of self-determination**.

Philosophical Background:

- This theory is rooted in **classical liberalism**, which values freedom of the individual.
- **H.L.A. Hart**, a key legal philosopher of the 20th century, was a major supporter.
- It is often associated with **contract law, individual liberties, and civil rights**.

Examples:

1. **Right to Own and Use Property:** Imagine a person owns land. They have the right to build a house, rent it, sell it, or keep it vacant. The law gives them the **freedom to make these decisions**. Will Theory sees this right as a matter of **individual control**, not just social benefit.
2. **Right to Free Speech:** A journalist has the right to speak their opinion, or to stay silent. They can write articles, express views online, or allow others to speak on their behalf. This reflects the core of Will Theory—**autonomy in expression**.
3. **Right to Privacy in Digital Spaces:** Users can often give or withdraw permission to use their data. They **choose** how much of their personal

information they share. Again, the power of **choice and consent** defines the right.

Limitations of Will Theory:

- This theory **cannot easily explain** how **infants, people with severe disabilities, animals, or future generations** have rights, since they may not be capable of making choices or exercising control.
- It tends to focus more on the **formal freedom** to choose rather than the **material conditions** necessary to make meaningful choices.

II. Interest Theory of Rights

Core Idea: The Interest Theory says that rights exist **to protect significant human interests or needs**. A person has a right if some important part of their life—such as health, dignity, or education—depends on others recognizing and respecting it. According to this theory, you don't need to be able to claim or use a right to have one. What matters is that **your well-being depends on it**.

Philosophical Background:

- **Joseph Raz**, a leading legal theorist, is one of the strongest defenders of Interest Theory.
- This theory aligns well with **human rights law, welfare policies, and social justice principles**.

Examples:

1. **Children's Right to Education:** A 5-year-old child may not understand the law, but still has a right to go to school. This right is justified because education is vital for the **child's future development**.
2. **Animal Rights:** Animals cannot speak or make claims, but many countries have passed laws to prevent **cruelty and exploitation**, because animals have **interests in avoiding pain, hunger, and fear**.
3. **Rights of Future Generations:** Climate activists often speak about the rights of people **not yet born**. These future humans cannot make choices today, but we believe they have interests in a **livable planet**, clean air, and safe water.

Limitations of Interest Theory:

- Some critics say it makes **too many things look like rights**, even when they might be moral preferences or social goals.
- It may weaken the idea of **rights as personal powers**, reducing them to just forms of protection.