Natural Law, Natural Rights, and Human Rights: The Theoretical Turn of Natural Law and the Formation of the Concept of Human Rights

BO Zhenfeng[*]

Abstract: *The rise of rationality and the development of science led to the transformation of the teleological view of nature to the mechanistic view of nature in the West. This transformation gradually separated "human nature" and "the nature of things"—which were unified in the classical era — thereby causing a discontinuity between the natural law tradition and the classical era. From then on, natural law, which had integrated physical natural law and jurisprudential natural law in the classical era, split into two parts: the "rules of nature" that reflect the order of the natural world, and "natural law" that regulates human social life. It was within this discontinuity that "natural rights" in the subjective sense emerged from natural law. Since then, natural rights have been used as the foundation for the legitimacy of the state. This established the basic argumentative model of modern political theory and also provided a new ideological source for justifying the legitimacy of state power. When the metaphysical or theological connotations inherent in natural rights were stripped away, natural rights evolved into "rights of humanity," and thus the concept of "human rights" was formally born.*

Keywords: mechanistic view of nature ♦ natural law ♦ natural rights ♦ human rights

The concept of modern human rights derives from natural rights, which were originally enveloped in the veil of natural law and deeply embedded within the profound historical currents of natural law, only emerging from it in modern times. In the developmental history of the concept of human rights, there exists a linear progression: natural law → natural rights → human rights. This understanding has almost become an established conclusion in contemporary political philosophy. However, once an issue is regarded as an "established conclusion," it may obscure deeper reflections on the matter. People often cite without second thought the words of Alexander Passerin d'Entrèves: "Properly speaking, the modern natural law theory is not at all a theory about law, but a theory about rights. Under the cover of similar terminology, a significant transformation has taken place."[1] However, they have overlooked why this "profound shift" occurred in the 17th century, how natural law was transformed into natural rights, what happened to both after this transformation, and how the concept of human rights eventually evolved from natural rights. The paper argues that the rise of reason and the development of science after the Renaissance led to a significant shift in the view of nature. This transformation caused a discontinuity between the natural law tradition and the classical era, and it was within this discontinuity that natural rights were born out of natural law. Simultaneously, this process transformed natural law into "a mass of explosives, which shattered an ancient monarchy and shook the European continent."[2] When the metaphysical or theological connotations were stripped away from natural rights, they transformed into the rights of human beings, and thus the concept of "human rights" officially came into being.

I. From Nature to Natural Law — Continuity or Discontinuity?

The term "natural law" is etymologically composed of the words "nature" and "law." Changes in the meaning of either component — "nature" or "law" — can lead to differing interpretations of their compound, "natural law." In particular, the word "nature" carries multiple meanings, which have evolved significantly from ancient to modern times. Variations in the understanding of "nature"

[*] BO Zhenfeng (薄振峰), Associate Professor, Law School, People's Public Security University of China.

[1] Alexander d'Entrèves, *Natural Law: An Introduction to Legal Philosophy*, translated by Li Rizhang, Liang Jie, and Wang Li (Beijing: New Star Press, 2008): 68.

[2] Ibid., 6.

across different historical and cultural contexts have resulted in numerous semantic shifts in the concept of natural law.[3] Therefore, it can be said that "the various meanings of the term 'natural law' are essentially a reflection of the multiple interpretations of the word 'nature.'"[4] It can be argued that the history of natural law itself "is essentially nothing but the history of the concept of 'nature' in law and politics."[5] In this sense, to explore the modern transformation from natural law to natural rights, one must begin by examining the differences in the concepts of "nature" and "natural law" in ancient and modern times.

A. The unity of physical natural law and jurisprudential natural law: Nature and natural law under a teleological view of nature

In ancient Greece, "nature" (physis) was the primary subject and foundation of philosophical inquiry. Its fundamental or original meaning referred to "essence" or "inherent character," which is close to the modern Western concept of "nature." The term first appeared in the 8th-century BCE epic *The Odyssey*, denoting the outcome of a thing's growth. By the 5th century BCE, in the medical writings of the Hippocratic school, the word often corresponded to a patient's inherent constitution or the results brought about by birth. In these same texts, its meaning gradually expanded to include the distinctive characteristics of a thing, or its primary, original, and thus normative mode of existence.[6] By the time of the Sophists, the concept of "nature" became further clarified through its opposition to "convention" (nomos). At this stage, "nature" no longer referred to external nature as an object or an eternal order, but rather to the "nature" inherent in human beings — that is, human nature itself.

Another meaning of "nature" refers to the totality or aggregate of all natural things, that is, the sum or collection of all natural entities in the universe. In the 5th century BCE, Gorgias of Leontini authored a work — *On Nature or the Non-Existent*, which did not discuss the fundamental principle of being, but rather addressed a collective entity — not the inherent quality that makes a thing manifest as it is, but the natural world as a whole. As R.G. Collingwood noted, "Rather infrequently and relatively late, it also took on this second meaning of the sum or collection of natural things, gradually becoming more or less synonymous with the term 'cosmos' (world)."[7]

It was in the quest for the fundamental principle of all things that the Greeks coined the term "nature," aiming to guide people beyond the influences of contingency and convention, and to seek a universal, eternal, and transcendent normative system. Through this, they sought to realize their inherent nature and lead a virtuous life.

In ancient Greece, whether among the natural philosophers, the Sophists, or thinkers like Plato and Aristotle, a teleological view of nature was universally held. They believed that all things in the cosmos possessed a telos — an aim, purpose, or ultimate end — existing within a teleological chain that guided them toward higher forms of life and more effective and vibrant modes of existence. As Collingwood summarized: "Since the natural world was not only a world of motion and thus full of life but also a world of orderly and regular motion, they asserted that nature was not only alive but also intelligent; not merely a great animal with a 'soul' or life of its own, but also a rational being with a 'mind' of its own. ... A plant or an animal, just as it shares physically in the bodily

[3] American scholar Costas Douzinas noted, "Natural law is a notoriously open-ended concept and its understanding is clouded in historical and moral uncertainty. According to Erik Wolf, there have been some seventeen meanings of the word *naturale* and fifteen of *jus* and their permutations lead to some 255 definitions of natural law." See Costas Douzinas, *The End of Human Rights*, translated by Guo Chunfa (Nanjing: Jiangsu People's Publishing House, 2002), 23. Similarly, Francis Oakley pointed out in his work that Arthur O. Lovejoy successfully distinguished at least 66 different usages of the term "natural law" in antiquity, thereby illustrating the semantic ambiguity of the word "nature" and the varying degrees of understanding associated with it. See Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas,* translated by Wang Tao (Beijing: The Commercial Press, 2015), 19.

[4] Alexander d'Entrèves, *Natural Law: An Introduction to Legal Philosophy*, 7.

[5] Ibid.

[6] Pierre Hadot, *The Veil of Isis: An Essay on the History of the Idea of Nature*, translated by Zhang Butian (Shanghai: East China Normal University Press, 2019), 30.

[7] R.G. Collingwood, *The Idea of Nature*, translated by Wu Guosheng (Beijing: The Commercial Press, 2018), 56.

organization of the world, also shares, according to its rank, psychically in the life of the world-soul and intelligently in the activity of the world-mind."[8]

This teleological view of nature regarded the cosmos as a vast, living, and dynamically evolving organism, within which both humans and all things realize their essence and value through a hierarchical order. Living beings collectively partake in the world's intelligence. The universe is unified and orderly, and within this cohesive, organic hierarchy, the vision of nature merges with human values — human nature becomes one with cosmic nature (all things). For classical philosophers, "nature was not merely a physical world, a 'way things are' or the totality of existence, but also a standard and norm that distinguished philosophical and political thought from obscurity."[9]

Since the Greek view of nature viewed it as an organism permeated by and infused with mind, they drew analogies between the objective world and the microcosm, the natural world and the individual human, during their observations of the cosmos. This process manifested itself as follows: "The individual first recognizes certain characteristics within himself as an individual, and then proceeds to infer that nature possesses similar traits. Through his introspective work, he begins to perceive himself as a body whose parts are in constant, harmonious motion. ... Thus, nature as a whole is interpreted as a macrocosm, understood by analogy with this microcosm."[10] They applied the scientific, descriptive physical natural law — derived from understanding the essence, order, and patterns of nature — to interpret human life and the life of the polis. This integration merged physical natural law with moral, normative jurisprudential natural law, forming a unified concept of nature that guided both individual and societal conduct. This concept of nature reflected the balance and harmony inherent in laws of nature, thus serving as natural law. Simultaneously, it functioned as moral law, embodying the harmony and equilibrium of human society and representing natural justice. "This justice is regarded as the supreme or ultimate law, deriving from the nature of the cosmos — from the existence of God and the nature of humanity. Thus, law — as the final recourse — is in a sense superior to the legislator."[11] Heraclitus was the first in human history to discover natural law — a rationality or way of nature to which human life must conform. Human laws, in his view, are "emanations" of this rationality and must "submit to the will of the One," that is, to the rational principle or law inherent in nature.

During the Hellenistic period, Stoic philosophers also viewed the world as an organic unity, permeated by what they considered a divine rational principle. They "added a moral dimension to the concept of 'nature,' expanding its scope to encompass not only the physical cosmos but also human thought, customs, and aspirations."[12] Natural law, inherent in the natural structure of things, is both normative and descriptive. It governs not only human moral conduct but also the very order of the cosmos itself. The highest form of life is to live in accordance with the nature of the universe — a life of integrity and moral excellence: "A virtuous life is one lived in harmony with the actual course of nature... for our indivisible nature is part of the nature of the entire cosmos. ... This law is the right reason that permeates all things, consistent with Zeus, the master and ruler of all existence."[13] Ulpian even asserted: "Natural law is the law instilled by nature in all animals. That is

[8] Ibid., 6.
[9] Costas Douzinas, *The End of Human Rights*, translated by Guo Chunfa (Nanjing: Jiangsu People's Publishing House, 2002), 31.
[10] R.G. Collingwood, *The Idea of Nature*, 12.
[11] Sir Ernest Barker, *Traditions of Civility*, cited from Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas*, translated by Wang Tao (Beijing: The Commercial Press, 2015), 13.
[12] Henry Sumner Maine, *Ancient Law*, translated by Shen Jingyi (Beijing: The Commercial Press, 1959), 36.
[13] Michael Bertram Crowe, *The Changing Profile of Natural Law,* cited from Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas*, translated by Wang Tao (Beijing: The Commercial Press, 2015), 27.

to say, this law is not unique to humans but is shared by all creatures dwelling on land and sea, including birds."[14]

In Christianity, God created the universe ex nihilo. The concept of "nature" discovered by the Greeks was thus transformed into a powerful entity, and the cosmos was simplified into the totality of heaven and earth. God governs this universe through universal laws, which correspond to His infinite wisdom. All things adhere to these laws with remarkable regularity. God rules the world through divine reason: "To the divine order of God, not even the fall of a sparrow escapes His omniscient gaze, and even the might of King Nebuchadnezzar cannot withstand His miraculous intervention."[15] "Moreover, the moral law of nature and its component — natural law (ius naturale) — are precisely the divine law directed at humanity, as the latter is also an integral part of divine law."[16]

Thomas Aquinas, the great synthesizer of Scholasticism, integrated Aristotelian thought into Christianity, transforming natural law from a law of revelation into a law of reason. In Aquinas's framework, natural law became the crystallization of human rationality and inherent human nature, rather than divine revelation. Building on this foundation, he classified law into four categories: eternal law, natural law, human law, and divine law. He stated: "The entire community of the universe is governed by divine reason. Thus, the rational guidance of creation by God, like the rule of a sovereign over the cosmos, possesses the nature of law... We call this law eternal law."[17] "The participation of the rational creature in the eternal law is called natural law."[18] "Particular determinations derived through the power of reasoning are called human law."[19] The commandments revealed by God in the *Bible* are referred to as divine law, which is "the law bestowed by God."[20] In Aquinas's philosophy, nature is a creation of God ex nihilo, rather than the eternal and immutable order conceived in Greek thought. He maintained that God's act of creation is both free and rational. Seeking to reconcile the relationship between nature and grace, he asserted, "Grace does not destroy nature, but perfects it."[21] In the hierarchical order of law he constructed, each lower form of law derives from a higher source of value. For instance, natural law is a participation in eternal law, human law is a logical derivation or contextual application of natural law, and divine law serves as a supplement to both human and natural law. The ultimate foundation of natural law, human law, and divine law lies in God's "divine reason." This "divine reason" assigns every creature — whether rational or non-rational — its proper purpose within the cosmos. Thus, all forms of law, whether physical natural law or jurisprudential natural law, are external manifestations of this inherent and intrinsic rationality. Through the reconciliation of nature and grace, the eternal divine order is realized.

B. The separation of laws of nature and natural law: nature and natural law under a mechanistic worldview

The intellectual liberation movement sparked by the Renaissance gradually weakened the authority of the Church over the human mind. Reason replaced authority in philosophy, and individuals began to assert their intellectual independence, leading to rapid advancements in science. Thinkers such as Leonardo da Vinci, Nicolaus Copernicus, Galileo Galilei, Johannes Kepler, and Isaac Newton stripped away elements of mystery and sorcery, seeking to explain nature in a wholly naturalistic manner. Copernicus's heliocentric theory marked the beginning of a new anti-dogmatic

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[14] Sandro Schipani, ed., *Justice and Law*, translated by Huang Feng (Beijing: China University of Political Science and Law Press, 1992), 35.

[15] Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas*, translated by Wang Tao (Beijing: The Commercial Press, 2015), 46.

[16] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, translated by Yao Zhongqiu (Shanghai: Shanghai Joint Publishing Company, 2007), 35.

[17] Thomas Aquinas, *Aquinas Selected Political Writings*, translated by Ma Qinghuai (Beijing: The Commercial Press, 1963), 106.

[18] Ibid., 107.

[19] Ibid.

[20] Ibid., 108.

[21] Alexander d'Entrèves, *Natural Law: An Introduction to Legal Philosophy*, 45.

trend; Kepler's research on planetary orbits further validated the significance of the heliocentric theory; and Galileo's major contributions to dynamics and astronomy dealt a heavy blow to the Aristotelian physics that had been upheld as orthodox during the Middle Ages. The discovery of Newton's three laws of motion laid the most crucial physical foundation for the development of modern science. Against the backdrop of these scientific advancements, philosophy also took great strides forward.

With the advancement of natural sciences, the teleological view of nature from the classical era faced increasing skepticism and was eventually replaced by the mechanistic view of nature. This mechanistic perspective posits that the world, without exception, can be reduced to matter and is driven solely by material interactions. Beyond this, there exists no purpose or final cause external to matter; even mind or thought is merely a result or manifestation of material processes. The universe is composed of fundamental units that remain unchanged in themselves, engaging in mechanical motions. Among these units, there is no qualitative distinction, hierarchy, order, harmony, or purpose — only the action of universal and impersonal forces.

Under the mechanistic view of nature, the unity between the natural world and human nature that characterized the classical era was severed. "Nature" came to be exclusively used to refer to the quantitatively organized system of moving bodies in the universe — that is, the natural world. As Collingwood noted: "Nature was no longer an organism but a machine; a machine in the literal and strict sense, an arrangement of bodily parts designed and assembled by an intelligent mind outside it for a definite purpose."[22] At this point, nature had become a soulless mechanism. "Classical nature had been replaced by a meaningless natural world... Nature itself had degenerated into a lifeless entity, an indifferent natural realm subject to human control or transformation."[23]

With the decline of the teleological view of nature, classical nature was replaced by a meaningless natural world. The cosmos as depicted in 16th- and 17th-century philosophy presented the following picture: "The entire universe is permeated by the same rationality, which is not just manifested in humanity. Any part of it can be comprehended by humans through exploration. Thus, all barriers between the hidden order of the cosmos and human thought were completely dismantled. The inscrutable divine was transformed into an intelligible nature."[24] Correspondingly, the once-integrated physical natural law and jurisprudential natural law of the classical era began to separate, evolving into distinct concepts: laws of nature and natural law. The term "laws of nature" came to be used predominantly in natural philosophy, referring to scientific principles such as geometric theorems or Newtonian laws. This shift occurred because thinkers interpreted nature in purely mechanistic terms, attributing all natural phenomena to the motion of matter governed by fixed rules. At this stage, nature was understood as "a unified existence in space and time, operating according to precise and deterministic laws."[25] Scientists' work is to explore the natural laws governing the motion of objects. As a tribute to this pursuit, it was famously proclaimed: "Nature, and Nature's laws lay hid in night. God said, Let Newton be! and all was light."[26] Laws of nature stripped away the moral connotations of the term "natural law," referring solely to the principles governing the motion of physical objects. On the other hand, natural law came to denote a higher-order law superior to positive law. By this stage, natural law was no longer understood as the inherent nature of all living beings, nor as the rational participation in eternal law, but had instead become exclusively associated with human beings.

The theoretical differentiation of natural law can be illustrated in Figure 1:

[22] R.G. Collingwood, *The Idea of Nature*, 8.
[23] Costas Douzinas, *The End of Human Rights*, 23.
[24] Edward S. Corwin, *The "Higher Law" Background of American Constitutional Law*, translated by Qiang Shigong (Beijing: SDX Joint Publishing Company, 1996), 60.
[25] Edmund Husserl, *Philosophy as a Rigorous Science*, translated by Ni Liangkang (Beijing: The Commercial Press, 2002), 8.
[26] This is a two-line epitaph poem written by the British poet Alexander Pope (1688-1744) for Newton, first published in 1735 (Newton passed away in 1727).

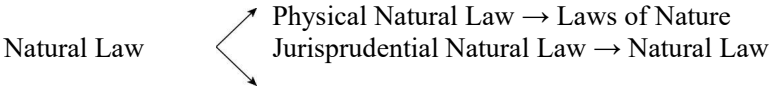

Figure 1. The Differentiation of Natural Law

From that point on, the distinction between "natural law" and "laws of nature" became an established norm and consensus in Western philosophy. For instance, Baruch Spinoza defined natural law as follows: "By the laws or rules of nature, I mean those principles according to which all things are constituted."[27] And laws of nature are "rules determined by physical necessity, representing the inevitable consequences of the properties or definitions of things. Rules established by human decree, more accurately, should be referred to as statutes."[28] Montesquieu also stated: "The material world has its laws; the intelligences superior to man have their laws; the beasts have their laws; man has his laws."[29] Human law is natural law, while the laws governing the material world are laws of nature.

Thus, in the 16th and 17th centuries, nature and natural law underwent a "discontinuity." Confronted with this discontinuity and the collapse of monism, Leo Strauss pointed out: "People were compelled to accept a fundamentally typical modern dualism — non-teleology in the natural sciences and teleology in the human sciences. ... This stance marks a break with the integrated view of Aristotle and Aquinas himself... Without resolving this fundamental issue, there can be no proper solution to the problem of natural rights."[30] It was precisely within this discontinuity that figures such as Hugo Grotius and Thomas Hobbes initiated and accomplished the transition from natural law to natural rights.

II. From Natural Law to Natural Rights

A. Hugo Grotius: the preliminary separation of natural law and natural rights

Hugo Grotius (1583-1645), the Dutch thinker renowned as the founder[31] of modern natural law theory and the father of international law, separated natural law from medieval Christianity by asserting that natural law does not originate from divine institution but from human nature itself. Here, "nature" does not refer to the physical or chemical world but to the "essence" of humanity. Human nature, in his view, is characterized by "sociality." He stated: "Among the traits unique to human beings is a strong desire for society — that is, a desire to live a social life with their own kind. This does not mean just any kind of life, but a peaceful life organized according to their intellectual capacities."[32] Human "sociality" necessitates the existence of certain minimum

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[27] Andre Santos Campos, *Spinoza's Revolutions in Natural Law*, translated by Zhang Qingjiang (Shanghai: East China Normal University Press, 2022), 43.

[28] Baruch Spinoza, *Theological-Political Treatise*, translated by Wen Xizeng (Beijing: The Commercial Press, 1963), 65.

[29] Montesquieu, *The Spirit of Laws (vol. 1)*, translated by Zhang Yanshen (Beijing: The Commercial Press, 1961), 1.

[30] Leo Strauss, *Natural Right and History*, translated by Peng Gang (Beijing: SDX Joint Publishing Company, 2003), 8-9.

[31] In recent years, some scholars have questioned Grotius's status as the founder of modern natural law. For instance, Heinrich A. Rommen pointed out that Grotius became renowned primarily for being the first to integrate natural law and positive law into international law, rather than for any major original contributions to legal thought. He noted that Grotius regarded God as the supreme source of natural law and remained largely rooted in tradition, thereby enabling him to interpret natural law in a deistic manner. See Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy,* translated by Yao Zhongqiu (Shanghai: Shanghai Joint Publishing Company, 2007), 65. D'Entrèves concurred that Grotius's concept of natural law, borrowed from the Spanish Scholastics, represents a continuation of the medieval natural law tradition. He argued that the assertion that natural law does not require the existence of God can find its roots in the Middle Ages. Grotius never acknowledged the full autonomy of human reason as the sole source of natural law. Where his natural law differs from Scholasticism lies not in its content, but in its method. See Alexander d'Entrèves, *Natural Law: An Introduction to Legal Philosophy,* translated by Li Rizhang, Liang Jie, and Wang Li (Beijing: New Star Press, 2008), 57-58.

[32] George H. Sabine, *A History of Political Theory (vol. 2)*, translated by Deng Zhenglai (Shanghai: Shanghai People's Publishing House, 2008), 100.

conditions or values that must be fulfilled to sustain a well-ordered society. He stated: "Even if we lacked nothing, it is precisely because human nature draws us into mutual social relations that this very nature becomes the mother of natural law."[33] It is from this inherent nature that natural law arises: "Natural law is the dictate of right reason, indicating that any act which aligns with rational nature is morally right, while any act contrary to it is morally wrong."[34] Following Marcus Tullius Cicero, natural law was once again defined as "right reason." Grotius expunged the theological connotations from the concept of natural law. In his definition, the subject of "reason in accordance with nature" is humanity, not God. "Right reason" refers to the power of human reasoning. Natural law is both the law of God and the law set for God. "Natural law is so immutable that not even God can alter it in any way... Two plus two must equal four, and no other possibility exists."[35]

In *The Rights of War and Peace*, Grotius provided a clear explanation of the subjective aspect of ius (or jure), defining it as "a moral right by which a person can justly claim something or perform a certain action," and regarded this as the "proper and strict" meaning of the term. In its subjective sense, he argued that "ius" refers to a "moral quality" possessed by an individual, which entitles him to certain specific rights or authorizes him to undertake particular actions. He further elaborated: "When this moral quality is complete, it is termed a 'faculty'; when incomplete, it is referred to as an 'aptitude.' In the context of natural things, the former corresponds precisely to 'action,' while the latter corresponds to 'power.'"[36] Here, the term "ius" is clearly endowed with the meaning of "right." Moreover, in his *Introduction to Dutch Jurisprudence*, he constructed a system of private law for the first time using rights rather than laws as the foundational tool. From this point onward, "rights usurped the entire theory of natural law."[37]

Driven by the advancements in modern science, jurisprudential natural law (laws of nature) parted ways with physical natural law (natural law). It was with Grotius that this jurisprudential natural law began to undergo further differentiation. Grotius distinguished between the subjective and objective meanings of "ius." In his view, the objective aspect of "ius" referred to justice, while its subjective aspect denoted a moral quality inherent in an individual, enabling them to possess certain specific jure or to perform a particular action. The jure he referred to was essentially rights. The objective meaning of "ius" was "entirely identical to the meaning of 'law.' In its broadest sense, it signifies a norm of moral action obliging us to behave appropriately."[38] The supreme tenets of natural law, as a normative framework for moral conduct, are: to honor agreements, refrain from seizing others' property, compensate for damages caused, avoid inflicting violence upon others, and accept punitive retribution for crimes committed.[39] From its subjective aspect, "ius" does not refer to what "is" when an action or state of affairs conforms to the law, but rather to what a person "has." This concept is centered on the individual and has been "subjectivized"; it is a power possessed by a person and is thus termed a moral quality of the individual.[40] From this point onward, "rights were no longer seen as an objective endowment of nature; instead, they became subject to human reason and were transformed into a subjective, rationalized form of entitlement. Natural rights evolved into individual rights."[41]

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[33] Ibid., 101.

[34] Hugo Grotius, *The Rights of War and Peace*, translated by He Qinhua et al. (Shanghai: Shanghai People's Publishing House, 2005), 32.

[35] Ibid., 34.

[36] Ibid., 30.

[37] Richard Tuck, *Natural Rights Theories: Their Origin and Development*, translated by Yang Limin and Zhu Shenggang (Changchun: Jilin Publishing Group Co., Ltd., 2014), 99.

[38] Hugo Grotius, *The Rights of War and Peace*, 31.

[39] Arthur Kaufmann, *Introduction to Contemporary Philosophy of Law and Legal Theory*, translated by Zheng Yongliu (Beijing: Law Press · China, 2002), 80.

[40] Knud Haakonssen, "Hugo Grotius and the History of Political Thought," translated by Liu Zhenyu, in *Natural Law: Changes in Ancient and Modern Times,* Wu Yan and Yang Tianjiang eds. (Shanghai: East China Normal University Press, 2018), 63.

[41] Costas Douzinas, *The End of Human Rights*, 65.

Grotius approached the understanding of natural law from the perspective of human nature. He liberated natural law and natural rights from the constraints of classical theology, asserting that not even God could alter natural law. This marked a transition "from metaphysical natural law to rationalist natural law."[42] Through his interpretation of the subjective and objective meanings of "ius," he distinguished between natural law and natural rights, both placed under natural law before such a distinction was made. He argued that natural law, in essence, consists of commandments to respect the rights of others and maintain peace, while individual subjective rights take precedence over objective legal order. Grotius is regarded as the true progenitor of all modern legal codes that place rights at their core[43] and was hailed by d'Entrèves as "one of the prophets of the brave new world."[44]

Compared to theological natural law, modern natural law theory is characterized by two major features: rationalism and individualism. From the perspective of the former, Grotius argued that natural law consists of rules that humans can discover through the use of their reason, which is a reiteration of the scholastic philosophical notion that the foundation of ethics lies in rational concepts. Grotius believed that natural law originates from human nature and is unalterable even by God. However, because he was deeply immersed in Christian spirituality and largely still part of traditional society, he would never go so far as to claim that God is entirely uninvolved in human affairs. He maintained that natural law has a divine origin — that is, God — and is instilled in the human heart by God. This ultimately renders Grotius's rationalism an incomplete form of rationalism. As Heinrich A. Rommen noted, Grotius "represented an attempt to resolve the debate between Suárez and Vázquez through reconciliation."[45] The task of removing God from direct involvement with human affairs, thereby establishing a fully "secular" theory of natural law, had to be left to later thinkers to accomplish.

From the perspective of individualism, Grotius believed that the foundation of natural law lies in human sociality. However, is this nature individualistic or social? Classical thinkers answered: "Human nature is inherently social."[46] This argument began to waver in Grotius's thought. In *Commentary on the Law of Prize and Booty*, he posited that humanity's inherent tendencies toward self-interest and self-love constitute the first principle of the entire natural order, with self-interest taking precedence over sociality. However, in *The Rights of War and Peace*, his emphasis shifted. He defined human sociality as the very source of natural law. In his view, self-interest/self-love and sociality are the two fundamental principles underpinning natural law.[47] He believed that the only effective way to foster social cohesion is through an authoritative government. He even cited Plato's *The Laws* to justify the precedence of state power over individual rights: "It is the common good that binds the state together, whereas divergent individual interests tear it apart. Therefore, it is more beneficial for both the state and the individual to prioritize the public good over private interests."[48]

In Grotius's works, we observe a concept of individual rights and, in this sense, a notion of subjective rights. However, in his definition, rights were not yet equated with freedom. Rights were not grounded in a view of nature that recognized and upheld the primacy of the individual. Each individual was subordinate to the whole and could only find true freedom within it. True freedom was attainable only when one could demonstrate their sociality. If a society threatened the well-

[42] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, 65.
[43] R. Tuck, *Natural Rights Theories, Their Origin and Development* (Cambridge: Cambridge University Press,1979), 66.
[44] Alexander d'Entrèves, *Natural Law: An Introduction to Legal Philosophy*, 56.
[45] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, 65.
[46] Leo Strauss, *Natural Right and History*, 130.
[47] Zhu Xiaozhe, "Hugo Grotius and the Modern Transformation of the Natural Law Tradition," *Oriental Law* 4 (2010): 86-99.
[48] Gary B. Herbert, *A Philosophical History of Rights*, translated by Huang Tao and Wang Tao (Shanghai: East China Normal University Press, 2020), 119.

being of its citizens and eroded their social cohesion, Grotius could not consistently call upon these citizens to assert their rights — under such circumstances, they effectively had no rights.

From the above analysis, it is evident that Grotius had not yet completed the theoretical construction of a subjective theory of rights. The task of pioneering and granting absolute priority to the individual, making self-preservation an "innate and absolute impulse,"[49] and fully transforming natural law into an individualistic, rights-based framework was left to later thinkers to accomplish.

B. Hobbes: the complete separation of natural law and natural rights

Thomas Hobbes (1588-1679) understood nature in a thoroughly mechanistic sense. For him, nature consisted purely of matter and the mechanical motion of forces. Animals, in his view, exhibit two distinct types of motion: one referred to as vital motion, and the other as animal motion or voluntary motion. Unlike vital motion, voluntary motion is driven by intention. "When this intention is directed toward something that elicits it, it is called desire or wish."[50] All passions or desires ultimately point to one fundamental human urge — self-preservation. To preserve one's own life, a person requires strength or power. Like all other natural beings, humans — as a unity of vital and intentional motion — are in a constant state of pursuing strength and power. He argued: "There is no such thing as the ultimate end or highest good spoken of by the ancient moral philosophers. A person whose desires cease is as incapable of living as one whose senses and imagination come to a halt. Happiness consists in the continual progression of desire from one object to another, where the attainment of one goal merely paves the way for the next."[51]

Hobbes's mechanistic interpretation of human nature overturned Aristotle's teleological framework. In political philosophy, Hobbes subverted Aristotle's classic definition of "man as a political animal." In his view, humans in the state of nature are atomistic individuals who belong neither to others nor to the state. Moreover, people are roughly equal to one another in both physical and mental capacities.

Driven by the need for self-preservation or by the desire to overpower others out of glory or vanity, every individual strives relentlessly to pursue power. As a result, the state of nature inevitably becomes one of conflict and war — a condition of "war of all against all." To ensure their own survival, people require a natural right, which is "the liberty each man has to use his own power, as he will himself, for the preservation of his own nature — that is to say, of his own life. Consequently, this liberty entails the freedom to do anything he, in his own judgment and reason, deems most conducive to that end."[52]

To ensure the realization of humanity's natural right to self-preservation, a "dictate of reason" is necessary — that is: "A Law of Nature is a precept or general rule found out by Reason by which a man is forbidden to do that which is destructive of his life or takes away the means of preserving his life and to omit that by which he thinks it may be best reserved."[53]

This dictate of reason (or rational principle) consists of two parts. The first part, regarded by Hobbes as the fundamental natural law, requires individuals to seek peace and adhere to it. The second part asserts that everyone has the right to employ all possible means and methods to defend themselves. It encapsulates the natural right of each individual and represents the most basic principle of rights.

Hobbes distinguished between right and law: law defines the boundaries of human action, prescribing what one must do or restraining one from doing something, whereas right designates the scope of action, indicating the freedom to act or refrain from acting.[54] He stated: "Those who discuss this subject often confuse right and law, yet they ought to be distinguished. For right lies in the freedom to act or not to act, while law determines and constrains people to adopt one of these

[49] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, 86.
[50] Thomas Hobbes, *Leviathan*, translated by Li Sifu and Li Tingbi (Beijing: The Commercial Press, 1985), 36.
[51] Ibid., 72.
[52] Ibid., 97.
[53] Ibid., 98.
[54] Huang Yusheng, *The Metaphysics of Rights* (Beijing: The Commercial Press, 2019), 150.

alternatives. Thus, the distinction between law and right is akin to that between obligation and freedom — the two are incompatible in the same matter."[55]

The preliminary distinction between natural law and natural rights made by Grotius was fully realized in Hobbes's theory (as shown in Figure 2):

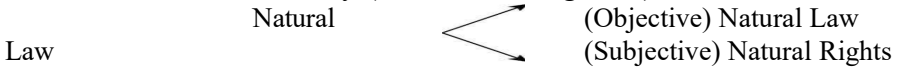

Figure 2. Hobbes's Classification of Natural Law

Hobbes equated the English word "right" with the Latin term "ius," limiting the subjective and objective meanings of "ius" to its subjective aspect — that is, "right." Conversely, he identified the English word "law" with the Latin term "lex," representing an objective "rule and measure." Accordingly, natural law signifies an independent rationalist system — a binding order independent of human will — while natural rights manifest themselves as "the absence of external impediments,"[56] that is, freedom.

Through Hobbes's theoretical reconstruction, the traditional "natural law theory, which emphasized objective norms," shifted toward the modern "natural rights theory, which prioritizes subjective rights,"[57] and the focus of natural law "shifted from natural obligations to natural rights."[58] This fundamentally transformed the very nature of natural law theory itself, endowing it with a more revolutionary force. Because "he (Hobbes), with a clarity and precision unprecedented and unmatched, made 'individual rights' — that is, the legitimate claims of the individual — the foundation of political philosophy, without contradictorily seeking reference from natural law or divine law."[59]

C. Locke: natural law as a nominalist symbol of individual rights

Locke also began with the state of nature to construct his theory of natural law. However, his conception of the state of nature was not Hobbes's "war of all against all," but rather a peaceful state of freedom and equality for all. The state of nature is one of freedom, where "within the bounds of the natural law, people may order their actions, and dispose of their possessions and persons, as they think fit, without asking leave, or depending upon the will of any other man."[60] At the same time, people in the state of nature are also equal, "since all the power and jurisdiction are reciprocal, no one having more than another."[61] The state of nature can maintain freedom and equality because "there is a natural law governing it, which is obligatory for everyone."[62] What, then, is natural law? Natural law is not divine will but reason — a reason that "teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or property."[63]

Locke's theory of natural law and natural rights is grounded in his empiricism and utilitarian view of human nature. In *An Essay Concerning Human Understanding*, he argues that, unlike God, humans possess only limited empirical knowledge and cannot perceive good and evil directly. Instead, individuals can only distinguish between good and evil through their experiences of pleasure and pain. Human nature, therefore, inherently seeks pleasure, avoids pain, and strives for self-preservation.[64] Rights are an indispensable attribute of human self-preservation and the pursuit

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[55] Thomas Hobbes, *Leviathan*, 98.
[56] Ibid., 97.
[57] Yan Juean, *Law and Practical Reason* (Beijing: China University of Political Science and Law Press, 2003), 233.
[58] Leo Strauss, *Natural Right and History*, 186.
[59] Leo Strauss, *The Political Philosophy of Hobbes*, translated by Shen Tong (Nanjing: Yilin Press, 2001) 188.
[60] John Locke, *Second Treatise of Civil Government*, translated by Ye Qifang and Qu Junong (Beijing: The Commercial Press, 1964), 3.
[61] Ibid., 3.
[62] Ibid., 4.
[63] Ibid.
[64] John Locke, *An Essay Concerning Human Understanding*, translated by Guan Wenyun (Beijing: The Commercial Press, 1959), 199-203 and 529-556.

of pleasure while avoiding pain. According to him, natural right is the liberty each person possesses to use their own power, as they see fit, to preserve their own nature — that is to say, the freedom to protect their own life and to do anything their own judgment and reason deem conducive to this end.[65] In the state of nature, on the one hand, every individual enjoys natural rights such as "life, health, liberty, and property." At the same time, reason and natural law also temper irrational desires, leading people to consciously recognize and respect the "natural rights" of others — that is, the legitimacy of self-preservation.

In his *Essays on the Law of Nature*, Locke distinguished between rights and law, stating: "The rule signified by these terms ought to be distinguished from natural right, for right is grounded in the fact that we make use of a thing, whereas law commands or forbids an action."[66] Locke equated natural law with reason, describing it as "a law that can be discovered by everyone through the abilities endowed by nature alone, and to which complete obedience is required by the principles of duty."[67] It is apprehended through human consent and inherent human tendencies. Compared to natural law, natural rights are a priori, emanating from the inner needs of individuals and enjoyed by everyone in the state of nature. The role and purpose of the state of nature and natural law are to more perfectly protect and develop these rights. Anyone who violates another's natural rights to life, liberty, equality, or property breaches natural law. The state is a utilitarian product of individual self -interest, and order arises from contracts among individuals. In Locke's theory, "natural law serves rather as a nominalist symbol for a category or bundle of individual rights, which originate from individual self-interest."[68] Natural rights are inherent from birth, while natural law is not. Natural rights are more fundamental than natural law and, in fact, form the very foundation of natural law.

In Locke's political philosophy, "after his treatment of the concept, natural law is almost entirely absorbed into the natural rights of the individual — or into the rights to 'life, liberty, and property.'"[69] Strauss argued that Locke's political philosophy is "revolutionary," as he "shifted the emphasis from natural duties or obligations to natural rights, making the individual self the center and source of the moral world. For it is man — not the ends of man — that becomes that center and source."[70]

Locke's political theory not only inspired the American and French bourgeois revolutions in the years that followed but was also institutionalized as a result of these revolutions. Consequently, natural rights were not only embraced as an ideal but were also engraved into the political cultures of the United States and France through legal texts. Reflecting on this, Frank Thilly remarked that historically, "no modern thinker has more successfully imprinted his ideas on the minds and institutions of the people than he did."[71]

Through the theoretical developments of thinkers such as Grotius, Hobbes, and Locke, the focus of natural law had shifted from its objective meaning to its subjective meaning by the 18th century. As Christian Wolff stated: "Whenever we speak of natural law (ius naturae), we never refer to the laws of nature, but rather to the rights that naturally belong to human beings by the force of nature."[72]

III. Natural Rights and the Community

In ancient Greece, the belief in Aristotle's notion that "man is by nature a creature of the polis" prevailed. The formation of the state was seen as a natural evolution from the family to the village and then to the polis. Individuals existed within a strict hierarchical order extending from the family

[65] Ralph Barton Perry, *Puritanism and Democracy* (New York: Vanguard Press, 1944), 169.
[66] John Locke, *Essays on the Law of Nature*, translated by Liu Shigong (Shanghai: Shanghai Joint Publishing Company, 2012), 115.
[67] Ibid., 115.
[68] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, 82.
[69] Edward S. Corwin, *The "Higher Law" Background of American Constitutional Law*, 62.
[70] Leo Strauss, *Natural Right and History*, 253.
[71] Frank Thilly, *A History of Philosophy*, translated by Jia Chenyang and Xie Benyun (Beijing: Guangming Daily Press, 2014), 324.
[72] Alexander d'Entrèves, *Natural Law: An Introduction to Legal Philosophy*, 70.

to the state, and the legitimacy of political society was grounded in a pre-existing order aimed at realizing the highest good. Thus, the political philosophy of the classical era can be termed virtue-based politics. Christianity, on the other hand, held that humans are creations of God, and therefore, human political life was an imitation of the Polis of God, with the purpose of fulfilling divine salvation for humanity. With the decline of the teleological view of nature, the state was no longer seen as the final cause of the family and the village, and humans were regarded neither as animals in the polis nor as divine creations. Instead, they came to be viewed as natural beings existing in a state of nature. It was within this context that individuals, seeking self-preservation, relinquished their natural rights to form the state. This transformation marked the shift from virtue-based politics to modern rights-based politics. The pioneering thinker who first proposed this groundbreaking idea was Hobbes.

A. Hobbes: natural rights, contract, and the Leviathan

In the history of Western political philosophy, Hobbes made "right" the starting point of his theory, whereas classical political philosophy revered "law."[73] Therefore, Strauss regarded Hobbes as the father of modern political philosophy. Hobbes believed that the essential attribute of human beings is not, as traditionally thought, their political or social nature. In the pre-political state, humans are equal in both physical and intellectual capacities. Yet, due to competition, distrust, and the pursuit of glory, they exist in a perpetual state of war. This state of war keeps everyone in constant fear, leading a life that is "solitary, poor, nasty, brutish, and short."[74] As long as "there is no common power to keep them in awe, men are in that condition which is called war."[75]

Hobbes believed that humans are driven by passions for equal benefits and superiority over others in terms of honor, which are the primary causes of the war of all against all in the state of nature. In this state, every individual possesses natural rights — that is, "the liberty each man has to use his own power, as he will for himself, for the preservation of his own nature — that is to say, of his own life."[76] Yet another passion dwells in human nature — the dread of mortality. Coupled with humanity's gift of reason, this fear steers us toward the peaceful course prescribed by natural law: to abandon the state of nature, forge social contracts, surrender portions of our natural rights, and construct an artificial common power to establish political society. The path unfolds this way: "to confer all power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will…. This is more than consent, or concord; it is a real unity of them all in one and the same person, made by covenant of every man with every man, in such manner as if every man should say to every man: I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition; that you give up, your right to him, and authorize all his actions in like manner. The multitude so united in one person is called a COMMONWEALTH; in Latin, CIVITAS. This is the generation of the great LEVIATHAN."[77]

Hobbes interpreted the world through the lens of perpetual material motion, replacing teleology with mechanism to explain the foundation of the state. His inquiry departed from the individual rather than the collective as its starting point. On this basis, he rejected the Aristotelian premise that human nature is inherently political or social, favoring instead the Epicurean view that humans are by nature apolitical or even asocial beings. In its place, he advanced an individualistic political atomism. He also embraced Epicureanism's identification of the good with pleasure, becoming a founder of political hedonism. For Hobbes, the state emerged from individuals transferring their natural rights through a covenant motivated by the fear of violent death. Unlike classical political philosophy, Hobbes began with the individual rather than the state, arguing that both the formation of the state and the authority of the sovereign derive from individuals. "Just as the Copernican revolution inverted humanity's understanding of the cosmos, Hobbes's theory of

[73] Leo Strauss, *The Political Philosophy of Hobbes*, 188.
[74] Thomas Hobbes, *Leviathan*, 95.
[75] Ibid., 94.
[76] Ibid., 97.
[77] Ibid., 132.

natural rights inverted the traditional view of the relationship between the state and the individual."[78] Friedman argued that his intellectual legacy spawned the contemporary human paradigm: ego-driven, hyper-individualistic, relentlessly materialistic beings, emancipated from religious constraints yet enthralled by the machinery of organized power.[79] In Hobbes's vision, the impulse for self-preservation stands as the singular wellspring of justice and morality, with every obligation flowing from this fundamental right. He set in motion a historic transition — from the duty-bound ethos of the classical era to the rights-affirming orientation of the modern era. For Hobbes, the state sprang from covenant; its authority, and that of the sovereign, is but an alienation of natural rights. The state is merely a utilitarian compact, deliberately fashioned by humanity to secure its own protection — its role confined to shielding individual natural rights, not to forging or fostering virtuous living. Aristotelian virtue was pared down by Hobbes to those social virtues requisite for peace. Justice shed its robe of conforming to transcendent standards and became simply the habit of honoring contracts. This very substitution forms the nucleus of "political hedonism."

By effecting a paradigm shift from state-centric to individual-focused frameworks, from duty-based to rights-oriented ethics, and from virtue-driven to rights-grounded principles, Hobbes justly stands as the pioneering architect of modern political philosophy.

B. Locke: political society emerges through the delegation of natural rights

Locke, too, grounded his political theory in the "state of nature" — a condition of perfect freedom, starkly contrasting with Hobbes's vision of universal war. In this liberty-rich yet restrained natural order, society is ruled by natural law, prohibiting any violation of life, health, freedom, or property. Here, each person holds the right to safeguard these inherent attributes, along with the authority to punish transgressors and claim redress for violations of these rights. Yet, measured against political society, the state of nature bears critical defects, leaving natural rights precarious and prone to breach. It wants three essentials: a recognized law as a common measure for disputes; an unbiased arbiter to judge by settled law; and a public force to execute rightful verdicts.[80] Bereft of these three essential elements, the state of nature remains a gravely deficient condition. Thus, it becomes an imperative for humanity to swiftly constitute a political society.

In order to enjoy a life of comfort, security, and peace, individuals in the state of nature enter into political society by establishing a social contract. Through this contract, they cede the right to do whatever they deem appropriate for self-preservation, submitting it to the regulation of laws enacted by society. They also transfer the right to punish violators of natural law to the public, which thenceforth determines societal laws and actions, and they pledge to assist the executive power of the political society with their natural strength. Following the social contract, they must also enter into a political contract to specify the form of government, confer political power upon magistrates, and define the composition and jurisdiction of the legislative and executive branches. After the formation of a state via the social contract, a separation of powers is necessary to better protect people's rights. Locke divided state power into legislative, executive, and federative powers, to be exercised by distinct state organs. Montesquieu's theory of the separation of powers was a further development based on Locke's foundation, ultimately forming the theoretical basis for the system of checks and balances in modern capitalist states. Furthermore, Locke maintained that when rulers violate the contract, the people retain the right to resist tyranny.

In Locke's political philosophy, the state is the result of the alienation of natural rights. Individuals relinquish the rights they held in the state of nature to interpret and enforce the law of nature—that is, the right to do whatsoever they deem fit and the right to punish offenses against natural law—transferring these rights to the institutor of the covenant. This transfer constitutes the origin and foundation of state power. "This is the original right and the source of both legislative and executive power, and of the very being of government and society itself."[81] Once a

[78] Yan Juean, *Law and Practical Reason*, 233.
[79] W. Friedman, *Legal Theory* (London: Stevenson, 1967), 122.
[80] John Locke, *Second Treatise of Civil Government*, 77-78.
[81] Ibid., 78.

community's government is constituted, it possesses only one function: to protect the rights of its members to life, health, property, and so forth. In this sense, the government's singular function of protecting the rights of its subjects is a power granted to the ruler or ruling body. This power is not absolute or irrevocable; rather, it constitutes an alienation of rights effected through a fiduciary trust for the purpose of the public good. Locke repeatedly emphasized that people constitute a state through a social contract for "no other end but the peace, safety, and public welfare of the people."[82] These rights become the ultimate criterion for evaluating all governmental activities and national laws. Order emerges as the product of contracts among individuals, with its purpose being to enhance and protect the private interests of citizens. The foundation of Locke's theory "lies, of course, in an overconfidence — born of optimism — in a characteristically individualistic presupposition: there is no such thing as a public good; it is nothing more than the sum of particular goods or individual interests,"[83] manifesting the typical characteristics of individualism.

Hobbes and Locke were both products of an era on the cusp of historical transformation. While Hobbes argued for absolute monarchical power and Locke searched for justification to limit sovereign authority, both rejected the old political framework of "divine right of kings" and instead provided new arguments and paradigms to legitimize state power and political order. The natural rights theory, with its foundation in the transfer of rights and the social contract, established the basis for the legitimacy of the state, setting the stage for modern political theory and offering a new intellectual source for the legitimacy of state power. Moreover, natural rights theory holds that the purpose of government is to protect natural rights, and when it fails in this mission, revolution against tyranny becomes justified. As Jean-Jacques Rousseau put it, "An uprising that results in the execution or abolition of a tyrant is as legitimate as the tyrant's previous arbitrary treatment of the lives and property of his subjects. The same violence that supports him can also bring him down."[84]

The modern bourgeoisie overthrew feudal despotism under the flag of natural rights. In both the revolutionary movements and the legal documents that followed their success, the influence of natural rights is evident at every turn. It was either employed to justify the revolution's legitimacy or used to build the new political system of the state.[85] The assessment of d'Entrèves's influence on natural law is also fitting when applied to natural rights: "Without natural law, it is likely that there would not have been the subsequent American and French revolutions. Moreover, the great ideals of liberty and equality would probably never have entered people's hearts, and from there, into the annals of law."[86]

IV. From Natural Rights to Human Rights

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[82] Ibid., 80.

[83] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, 82.

[84] Jean-Jacques Rousseau, *Discourse on the Origin and the Foundations of Inequality Among Men*, translated by Li Changshan (Beijing: The Commercial Press, 1962), 146.

[85] *The Mayflower Compact* of 1620 states: "In the name of God, Amen. We, whose names are underwritten, the loyal Subjects of our dread sovereign Lord, King James… do by these presents solemnly and mutually in the presence of God, and one of another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation… and to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due submission and obedience." *The United States Declaration of Independence* of 1776 states: "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, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." The French *Declaration of the Rights of Man and of the Citizen* of 1789 states: "Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good." "The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance to oppression." "The principle of all sovereignty resides essentially in the nation. No body, nor individual may exercise any authority which does not proceed directly from the nation."

[86] Alexander d'Entrèves, *Natural Law: An Introduction to Legal Philosophy*, 9.

Through the preceding analysis, we have established that the formation of the concept of natural rights stemmed from a "discontinuity" within the natural law tradition — a "Copernican revolution." However, its gestation and formation underwent a prolonged process of accumulation, resulting from the evolution of the two core concepts of "nature" and "law." It was both an outcome of the shift in the view of nature from classical to modern times and a product of the transformation of "ius" from an objective to a subjective meaning. It can be said that an extended period of "quantitative change" ultimately led to its "qualitative transformation" in the 17th century.

A. Ius: from objective right to subjective right

In ancient Greece, the concept of "rights" had not yet emerged; philosophers explored what was "just" according to nature. In Roman law, the concept of "rights" began to appear, embodied in the term "ius" used in the *Codex of Justinian*. Beyond its meaning of "justice," it already encompassed the notion that individuals could hold rights.[87] However, at this stage, the meaning of "ius" as "a right" was still enveloped within its other significations. Neither the Stoic philosophers nor the Roman jurists had yet divorced natural law from an all-encompassing cosmic order — what was defined as "the law that nature teaches to all animals."[88] Natural law still serves as the "objective" standard of human measure, but the concept of rights existing as freedom from this standard had clearly not yet emerged in the era of Roman law.

Christianity's core feature is its universalism, aiming to establish a society of individuals rather than tribes, clans, or castes. The individualism embedded in Christian teachings, particularly the salvation doctrine of the New Testament, began to quietly take shape in the 11th and 12th centuries. As the economy developed, cities emerged, and movements for civic freedoms gained momentum, secular individualism began to awaken. The Roman legal concept of "ius naturale" shifted its focus to the primacy of the individual, gradually laying the groundwork for the concept of subjective rights.

By the 12th century, canon lawyers began to oscillate between two interpretations of law (ius): one as an objective law that encompassed divine law and the original human law, and the other as individual subjective rights. This led to a decisive shift in the meaning and focus of law, moving from a universal natural law to "a power, force, ability, or faculty inhering in human persons."[89] In the view of 12th-century canon lawyers, natural law itself could be defined as an individual's inherent subjective power, which is the "legitimate realm of choice" of the individual, constituted by the nature of human agency.[90] This is already quite close to the modern understanding of "rights."

Thomas Aquinas reintroduced nature into humanity, arguing that the system of property did not stem from mankind's sinful condition but from the natural extension of the pursuit of material fulfillment. He believed there could be a natural commensurability between humans and things, which would make certain ownerships natural and thus "based on nature" rights. Of course, this is an objective legitimacy — a description of a legitimate life established by natural commensurability — rather than a subjective right, meaning the freedom for individuals to exercise rights without restriction relative to others.

In the famous 14th-century debate over "apostolic poverty" between the Franciscans and the Dominicans, the concept of rights saw a major development. Marsilius of Padua offered a detailed distinction in the understanding of "ius."[91] He differentiated between "objective" rights and

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[87] In the author's view, the "concept" of rights had already been established in Roman law, but it lacked a proper "definition," with no clear and precise boundary or explanation of its content and scope. See Bo Zhenfeng, "The Discovery of Rights: The Embryo of the Concept of Rights in Roman Law," *Northern Legal Science* 4 (2020).

[88] Sandro Schipani, ed., *Justice and Law*, 35.

[89] Brain Tierney, "The Idea of Natural Rights", in *Studies on Natural Rights, Natural Law, and Church Law* 1150-1625.

[90] Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism*, translated by He Qingchuan (Guilin: Guangxi Normal University Press, 2021), 413.

[91] Marsilius categorized ius into: (1) Law (lex). In terms of law, he not only listed mandatory commands or prohibitive laws that lead to punishment but also included "permissive laws" (lex permissa), which do not impose punishment on individuals for doing or not doing certain actions, such as acts of generosity. (2) Rights. This refers

"subjective" rights, referring to the norms that regulate human actions and the power individuals have in accordance with those norms. When discussing "ownership" (dominium), he emphasized that dominium is a type of ius, representing the subjective power a person has to claim something they have lawfully obtained. It also represents the actual and habitual will of an individual in acquiring something legally. Thus, the core concept of personal rights, linking individual will and property rights, is fully articulated.

In the view of another key figure in the "apostolic poverty" debate, William of Occam, a person can claim the right to use external objects, but this does not grant them legal ownership (ownership/dominium) of the property. Since the use of external objects does not lead to private ownership, their apostolic poverty and spiritual purity remain intact. The natural right to use something does not confer ownership (dominium), nor does it result in legal ownership (ownership). Occam replaced the notion of "ownership" (dominium), which carries connotations of control over things, with the concept of subjective rights (ius). This "right" is understood as a potential or ability (potentia) for action, a permissive power, rather than a power in the strict, legitimate sense (potestas iusta).[92] Because Occam defined ius as legitimate capacity (potestas), this combined ius with potestas, which caused the objective meaning of ius to lose its space for activity. The French thinker Michel Villey referred to Occam as the "father of subjective rights," believing he marked the "decisive moment in the history of subjective rights." Richard Tuck also said, "This doctrine, with slight modification, is very close to the classical theory of rights in the 17th century."[93]

By the time of Jean Gerson (1363-1429), a key theorist in the later conciliar movement, the idea of defining "ius" through subjective rights had fully developed. He defined "ius" as "the direct ability or power suitable to a person, according to the directive of legitimate reason." This natural right had no moral connotation and was closer to a kind of freedom, rather than the "objective" rights of individuals as previously understood. However, the rights Gerson described were still viewed as something prescribed by God for humans, meaning that, in this context, they remained an essential part of the objective and legitimate order. This was because, during Gerson's time, there was no natural view that could replace the will of God.

B. Natural law → natural rights → human rights: the emergence of the concept of human rights

As discussed earlier, the Renaissance, with its awakening of reason and the advancement of science, led to the replacement of the Aristotelian teleological view of nature with a mechanistic one. Nature itself lost its inherent purpose and order. "Seen purely as a physical world, it was fundamentally disconnected from humanity, becoming the ultimate emptiness — a classical goal or medieval animism. Its existence no longer held spiritual or value meaning and became a terrifying, adversarial force."[94] The world of humans and the world of objects became separated. With the separation of the human world and the world of objects, the natural law that regulated and adjusted the human world, and the physical natural law that regulated the world of objects, which had been united in the classical world, also separated into laws of nature and natural rights. Then, starting with Grotius, the natural law that governed human affairs once again divided, with its objective side splitting into natural law and its subjective side splitting into natural rights. After the discontinuity in the 17th century, "the concept of natural law combined with the ancient concept of rights that had

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to all actions, capacities, or acquired habits that align with the first meaning of ius, as defined by law, whether internal or external. These rights may pertain to something internal or involve an external object, such as the use, enjoyment, acquisition, possession, preservation, or exchange of things, and other similar situations. (3) Judgment: The ruling made by a judge based on (1). (4) Justice: The behavior or habit of narrow justice. See Li Qiang, *Natural Society: Natural Law and the Formation of the Modern Moral World* (Beijing: SDX Joint Publishing Company, 2015), 242.

92 Brett Liberty, *Right and Nature*, cited from Li Qiang, *Natural Society: Natural Law and the Formation of the Modern Moral World* (Beijing: SDX Joint Publishing Company, 2015), 244.

93 Richard Tuck, *Natural Rights Theories: Their Origin and Development*, 34.

94 Costas Douzinas, *The End of Human Rights*, 65.

never disappeared, appearing in a new form."[95] This new form is natural rights. At this point, it "is no longer an objective, innate thing; rights now obey human reason and are a subjective, rationalized right."[96]

The discontinuity, differentiation, and evolution of natural law in the 17th century can be briefly illustrated in Figure 3.

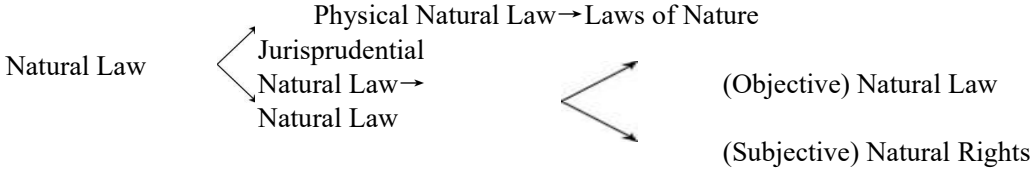

Figure 3. The Discontinuity, Differentiation, and Evolution of Natural Law

At this point, natural law has removed the label of scholastic theology and replaced it with rational discourse. The unfathomable divine has transformed into comprehensible nature, and a part of nature is human nature and its institutions. Thinkers of the 17th century sought the source of natural law from human nature — reason. Human reason became the measure and standard for law. Grotius insisted: "Natural law is the command of legitimate reason."[97] According to Locke, "reason is natural law."[98] Hobbes stressed: "A Law of Nature is a precept or general rule found out by Reason."[99] They all viewed natural law as reason. In the subsequent years, natural law, with its core principles of rationality, justice, rights, and equality, came to be regarded as "a political theory focused on advocating and supporting specific political reforms,"[100] acting as the ideological standard-bearer in the bourgeois revolution. In the years that followed, "whenever the human mind grew tired of the unsatisfactory pursuit of facts and turned once again to metaphysics, the 'queen of all disciplines,' natural law would always return to jurisprudence."[101]

After natural law underwent differentiation, its subjective aspect became natural rights. These are the rights that inherently belong to individuals by the power of natural law. The reason why humans possess these rights is that they are part of nature, and the rights they enjoy through nature (or their inherent nature) are those afforded to them simply by virtue of being human. Jacques Maritain explained this by stating: "A person has rights because they are a person, a whole, the master of themselves and their own actions, and thus not a means to achieve some external goal, but an end in themselves, a goal that must be treated as an objective in itself."[102] Natural rights stemmed from natural law, with both having a shared origin and theoretical foundation. As the theory of natural law waned in the 18th and 19th centuries, the theory of natural rights, which had played a part in revolutionary movements, also declined. It wasn't until after World War II, following the collapse of fascist regimes and the resurgence of values like justice and human rights, that natural law theory experienced a revival. At this time, the concept of human rights — directly based on human dignity and no longer relying on a priori or assumed theories — replaced the concept of natural rights.[103] As to the natural rights, derived from natural law, "after the term 'physis' lost its value, what was once called natural rights became human rights, or what we now refer to as 'human rights.'"[104] It was from this point that the concept of "human rights" was formally established.

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[95] Georg Jellinek, *The Declaration of the Rights of Man and of the Citizen: A Contribution to Modern Constitutional History, trans*lated by Li Jinhui (Beijing: The Commercial Press, 2013), 58.

[96] Costas Douzinas, *The End of Human Rights*, 65.

[97] Hugo Grotius, *The Rights of War and Peace*, 32.

[98] John Locke, *Second Treatise of Civil Government*, 4.

[99] Thomas Hobbes, *Leviathan*, 98.

[100] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, 82.

[101] Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, 29.

[102] Jacques Maritain, *Human Rights and Natural Law,* translated by Wu Yan (Beijing: The Commercial Press, 2020), 53.

[103] Zhong Lijuan, *A Study on the Institutionalization of Natural Rights* (Jinan: Shandong People's Publishing House, 2010), 37.

[104] Leo Strauss, *Natural Right and History*, 47. Similar views can also be found among some Western scholars. For example, British political scientist D. Raphael suggested that the reason rights such as life and liberty are

(*Translated by JIANG Lin*)

called natural rights is because, in the past, they were thought to derive from "natural law" or divine law. However, "now there is no need to include metaphysical or theological assumptions in the understanding of these rights." Japanese legal scholar Miyazawa Toshiyoshi also observed: "In many countries today, when considering the foundation for recognizing human rights, there is no longer a need to invoke God or natural law. Instead, it suffices to base human rights on concepts such as 'human nature' or 'human dignity.' This interpretation of human rights implies that every human being, in biological terms, should also be recognized as a person in social terms, and the social person is the highest value in human society." See Shen Zongling, *Comparative Constitutional Law: A Comparative Study of the Constitutions of Eight Nations* (Beijing: Peking University Press, 2002), 48.