

**HISTORY OF
HUMAN RIGHTS**

**Greek Conceptions of Natural Rights as
Reflected in Modern Theories of Human Rights**

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1. Background

The modern human rights regime can be said to have been established in the aftermath of the second world war with the setting up of the United Nations, and thereafter, adoption of the Universal Declaration of Human Rights. Some of the rights that form part of the UDHR and plethora of human

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rights instruments adopted at international, regional, and national levels, subsequently, and the notions that form the basis of these rights can however, be traced much further back, in fact, to ancient Greece.

The Ancient Greeks were possessed of “an unusual degree of insight into natural and social phenomena” and inquired into a range of questions including on the state, its origin and basis, and its relationship with other “higher” or more fundamental standards which are relevant till the present day, and it is for this reason that the views of the ancient Greeks are reverted to in studying a variety of subjects.¹ In the study of natural rights and natural law, also, it is apt to begin with Greek concepts, some of which are reflected in contemporary thought and practice. Greek philosophers, poets, and authors are classified as

natural law thinkers as they recognised the existence of a law of nature distinct from and “higher” than that of man.

Ancient Greek society in the Homeric Period was comprised of households and clans headed by the *agathos* or *kyrios*.

During this period there was no concept of rights as such, though the agathos exercised certain powers.

The position underwent a change after the establishment of the *polis* or the city-state after which some members of clans began to participate in governance in their individual capacities (though the basis of membership remained the membership of clans). The reforms introduced by Solon brought about a further change as far as political rights were concerned. Notions of natural law are found in the

¹ Edgar Bodenheimer, *Jurisprudence* 3 (2006).

thoughts of Sophist thinkers and thereafter, in the ideas of Plato and Aristotle.

Although it has been pointed out and rightly so that there was no expression in ancient Greece that corresponds with modern notions of “rights”, at the same time, as Miller² asserts, it is wrong to assume that the Greeks had no concept of rights.

Greek notions of natural law and natural justice provide the basis for most modern conceptions of human rights.

2. Development of Greek Conceptions of Natural Law and Natural Rights

Homeric Greece, as mentioned above, consisted of households and clans headed by the *Agathos*, which worshipped common gods or ancestors. There was no notion of individuality and people were looked upon simply as members of clans. Morrison points out that in Homeric society, the basic values, of society as well as man’s place were predetermined as were the privileges and duties that followed from that status.³ Consequently, there was no notion of individual rights as modern theorists conceptualise. The clan had great authority over its individual members. Property was also held by the clan as a whole and could not be divided. It was held by the *agathos* and after his death passed on to the next oldest male descendant. Members were required to live in accordance with the ways of the clan and

² Fred D. Miller, “Aristotle’s Theory of Political Rights”, in Richard O. Brooks and James Bernard (Eds), *Aristotle and Modern Law* 311 (2003).

³ Wayne Morrison, *Jurisprudence* 19 (1997).

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owed duties only to the clan. There was no requirement of respecting the gods, etc. of other clans.⁴

In the ancient period, law and religion were almost inseparable and it was believed, as Homer felt, that law was communicated by the god *Zeus* to the heart of man.⁵ The Oracle at Delphi was resorted to both for the “enunciation of the divine will” and matters pertaining to legislation.⁶

A change in the position related to “rights” came about after the establishment of the city-state or polis.

As Friedman notes, it was the city-state that provided the background in which philosophers and poets developed thoughts on law and government.⁷ The establishment of the city-state led to the weakening of the clans. City states began to be

governed by a council of nine *archons*, who, although chosen on the basis of their membership of clans, acted in their individual capacity in performing their various functions. With the passage of time, the influence of clans weakened and for the first time individuals could come into being as individuals.⁸ However, many people, particularly those who were not members of clans, could still not participate in governance or voice their opinions.

The reforms introduced by Solon (638–559 BC) brought about further changes and certain practices comparable to the present day ideas of rights. One of the major changes introduced by Solon was the possibility of persons being part of governance on the basis of their property rather than on the basis of membership of clans. This implied the possibility, that at least in theory, any person could be a part of

⁴ Gary B. Herbert, *A Philosophical History of Rights* 5 (2003).

⁵ Bodenheimer, *supra* note 1.

⁶ *Ibid.*

⁷ W. Friedman, *Legal Theory* 5 (5th ed. 2003).

⁸ Miller, *supra* note 2.

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governance.⁹ Some commentators¹⁰ have noted that by 458–457 B.C. almost all citizens had the right to vote and the highest office was open to more than half of the citizens. Thus, the reforms of Solon and subsequent developments led to the development of a stronger set of political rights.

A question of importance that was considered by Greek thinkers was the conflict between the laws of man and the laws of nature.

The classical expression of this conflict as commentators such as Friedman¹¹ and Bodenheimer¹² note is in the works of Sophocles. Sophocles' *Antigone* tells the story of Antigone who chooses to disobey the human law—the command of King Creon who dooms her dead brother to be

left on the streets without a burial—to obey the divine (and eternal) law that warrants that the dead be given a decent burial. She says –“*Not of today nor of yesterday they are, but live eternal, Nor would I fear the wrath of any man (and brave Gods vengeance) for defying these*”.¹³ Sophist thinkers like Antiphon distinguished between the laws of man (*nomos*) and the laws of nature (*physis*) and stressed that none can violate the laws of nature with impunity though one who violates the laws of man would go unpunished if the violation were not detected.¹⁴ Callicles and Thrasymachus believed that the right of the strong is a postulate of the law of nature and in acting in accord with it, one would be following the dictates of nature.

⁹ *Id.*

¹⁰ Carol Ray Hansen, Carol Devine et al, *Human Rights: The Essential Reference* 4 (1999).

¹¹ See *Supra* note 4 at 6.

¹² *Supra* note 5.

¹³ *Id.*

¹⁴ *Id.*

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Some Sophist thinkers also had notions of the equality of individuals.

For instance, Lychophon was of the view that the end of law is the security of individuals and the difference between nobility and others was one that existed in men's opinions and not in reality¹⁵. Alchidamas recognized that all men were free.¹⁶

Another idea traceable to ancient Greece is that of social contract and agreements between the state and its citizens. For instance, Glaucon propounded a social contract theory that has been compared to the theories of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau.¹⁷ The dialogue *Crito*, between Socrates and Crito also refers to the existence of an agreement between the “laws and constitution” and private citizens.¹⁸

Plato and Aristotle, both considered questions of law and justice and although their approaches were different, both made important contributions. Plato believed that men by nature are unequal and that nature had endowed men with different qualities based on which he classified men into gold, silver, bronze and iron. The characteristics were not necessarily hereditary. He believed, as set out in his work *the Republic*, that in the (ideal) state, the philosopher kings would rule based on their wisdom and not according to written laws (although later, in *the Laws*, he acknowledged the role of written laws). He felt that in an ideal state, justice would prevail. He looked beyond the laws of man for a more permanent source of justice.¹⁹ His ideas were centered around the notion of the naturally right way of life. His notion of natural right is objective,

¹⁵ See David G. Ritchie, *Natural Rights* 25 (1903).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ See Hugh Tredennick (trans.), “Crito” in Joel Friedberg and Jules Coleman (eds.), *Philosophy of Law* 215 (2000).

¹⁹ Hansen et al., *supra* note 10.

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which can be pursued by those who had sufficient ability, but not one that can be claimed by all equally: To him, achieving natural right meant realising patterns of perfection in oneself as permitted by one's historical and temporal circumstances.²⁰

His concept of common good contained a universal moral standard for human conduct and a defence of the rights of women.

Aristotle believed in something comparable to the rule of law and felt that magistrates should govern and should be governed by law. At the same time, he gives a place in his scheme of things to equity, which he felt should be relied on in the absence of law.²¹ His notion of distributive justice

was based on equitable principles. Another important aspect is the distinction between natural justice,²² which was universal and based on human nature, and legal justice, which was based on positive laws.

Unlike Plato's ideas, Aristotle's notion of the right way of life was linked with the material world. He felt that by nature there was a highest form of excellence, right for man, and the natural rights as Herbert interprets it is that final end or excellence towards which people strive rather than the liberty to act as one pleases.²³ Aristotle felt that the clan was not in accordance with nature as there the *agathos* 'ruled' based on his blood descent and not his wisdom while in a *polis*, anyone could govern if he possessed practical wisdom.²⁴

²⁰ Herbert, *supra* note 4.

²¹ Bodenheimer, *supra* note 1.

²² Ritchie notes that Aristotle's 'natural justice' is an ideal toward which human justice tends. See David G. Ritchie, *Natural Rights*, 29 (1903).

²³ Herbert, *supra* note 4.

²⁴ *Ibid.*

Thus, for both Plato and Aristotle, natural right was linked to natural abilities and independent of that, there was no “right”. In fact, classical natural law, as Morrison asserts implied natural functions, ends, and duties rather than natural rights.²⁵

*It may be mentioned, however, that in classical Greek society, the position of women and other categories of persons such as slaves and those who could not prove themselves to be the children of citizens, was different from that of men. There was also no guarantee as such of humane conduct by the state.*²⁶

3. Reflections of Greek Thought in Modern Theories of Human Rights

Ancient Greek thought on law, government, and justice is certainly reflected in modern conceptions of human rights. While initially, Greek society lacked notions of individuality and thus notions of “human rights”, the developments in society and thought led to concepts that are relatable to modern-day notions.

Most Greek thinkers from the Sophists to Plato and Aristotle had notions of natural law and natural justice and the existence of some standard higher than the laws of man. Aristotle’s notion of natural justice, as mentioned earlier, was justice that was based on human nature and was universal. The modern Western concept of human rights that is prevalent today is that of “rights” which people have

²⁵ Morrison, *supra* note 3.

²⁶ Hansen et al., *supra* note 10.

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“by virtue of being human” and are thus essentially universal in nature, seen as inherent in human beings.

Further, notions of social contract were also present in ancient Greece. The modern Western concept of human rights or at least the basis thereof is often traced back to the ideas of natural law thinkers such as Grotius, Hobbes, Locke and Rousseau, whose theories laid down the foundations for modern theories and standards of human rights. These thinkers based their theory of rights on the fact that all men were born free and with certain rights, some of which they surrendered on entering into a “social contract”. The notion of a social contract is thus based upon the idea that men as individuals possess certain rights and those rights that people cannot give up when entering into the “social contract” are their basic human rights.

The debate between natural and human laws that was considered by many in ancient Greece is found repeatedly in the development of human rights in the West.²⁷ It can be compared with notions of “human rights” natural law thinkers and their criticism by, among others positivists, who believe that human law, or laws posited by human beings (the sovereign authority) is the only law. It can also be compared with debates on law and the role of morality.

The Declaration of Independence of the United States and the French Declaration of the Rights of Man recognised that all men are born free and equal in rights.

*The idea that all persons are born free was present in the thoughts of some Sophist thinkers like Alcidamas, and others like Lycophron felt that the inequalities among men were created by men and did not exist in reality.*²⁸

²⁷ *Id.*

²⁸ See W.C. Guthrie, *The Sophists* 160 (1971); Karl Popper, *The Open Society and Its Enemies* 67 (2011).

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There was, however, no notion of rights as defined by modern human rights theorists as such. In other words, there does not appear to be any idea of rights as “claims” made against the state. Plato’s and Aristotle’s notion of rights related to the right way of life and achievement of the excellence that was by nature ‘right’ for man.

The modern notion of rights recognizes the liberty of individuals to aim for any standards of excellence he sets for himself (rather than only those “set by nature”).

While there was no expression corresponding with the modern notion of rights, there was a notion of duty. However, Miller has identified certain other concepts comparable with the Hohfeldian classification such as *dunamin* which refers to the power to elect and audit offices that were present in

ancient Greece.²⁹ Other concepts that have parallels with the Hohfeldian classification include *adeia* (comparable with immunity), *exesti* or *exousia* (liberty), and *akuros* (disability).³⁰

Another contribution of ancient Greece is in the context of some political rights that are recognized even today.

Today, in any democratic society, all citizens (save for those disallowed by certain disqualifications) have the right to vote and can (subject to holding the requisite qualifications) participate in the process of governance. The right to vote and be elected in genuine elections is specifically recognized in the International Covenant on Civil and Political Rights, 1966.³¹ Such political rights namely, the right to vote and participate in the process of governance for almost all the citizens existed, at least in theory, from the

²⁹ Miller, *supra* note 2.

³⁰ *Id.*

³¹ See Article 24 (b), International Covenant on Civil and Political Rights. Also article 21 (30), Universal Declaration of Human Rights, 1948.

period of Solon's rule and the reforms brought about by him.

4. Conclusion

Greek philosophy and thought are considered to be the foundation of much of modern Western philosophy and thought. Although the classical Greek theory of natural law and rights differed greatly from modern notions, particularly, where the concept of "right" itself is concerned, yet the importance of many of its notions in the modern human rights jurisprudence cannot be overlooked. It can thus be said that the roots of modern human rights can be found in ancient Greece.

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