HUMAN RIGHTS IN THEORETICAL AND PHILOSOPHICAL SENSES

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ABSTRACT

This essay aims to shed light on how the definition of human rights in theoretical and philosophical senses has been given and certain conceptual problems arising from different perceptions taken to define what human rights are and to identify to whom human rights belong. In analysing the concept of human rights in theoretical and philosophical senses, the historical approach is followed in the article given that historical approach demonstrates how the concept of human rights has gone beyond theoretical and philosophical debates and become legal and political issues and internationalised over time.

Key words: *the concept of human rights, natural law, legal positivism, internationalisation of human rights*

(Kuramsal ve Felsefi Anlamlarında İnsan Hakları)

ÖZET

Bu makalenin amacı, tarih boyunca insan hakları kavramının teorik ve felsefi açıdan nasıl tanımlandığına ve insan hakları kavramının tanımını etkileyen farklı bakış açılarından kaynaklanan kavramsal sorunlara kısaca ışık tutabilmektir. İnsan hakları uygulamalarını konu almayan bu makalede, insan hakları kavramının zamanla teorik ve felsefi tartışma konusu olmaktan çıkarak politik ve hukuki mesele haline dönüştüğünü gösterebilmek açısından tarihsel perspektif benimsenmiştir.

Anahtar sözcükler. *insan hakları kavramı, doğal hukuk, legal pozitivizm, insan haklarının uluslararasılaşması*

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Introduction

Human rights are considered the product of a philosophical debate. The origins of the concept of human rights can be traced to ancient Greece and Rome. In the ancient era, the concept of human rights had been defined and expressed in the light of natural law as universal, unchangeable, untouchable and supreme norms. In the Middle Ages, as the doctrine of natural law was interpreted in a theological way, the concept of human rights also gained a religious dimension. With the age of enlightenment when the ecclesiastical authority was shaken, the concept of human rights was handled in a secular way. And since the 20th century years have witnessed a rise of international approach to human rights and also a proliferation of human rights law; as in Kapur words, "*there is a sense that the international community is dealing with these –human rights-problems seriously and handling them with great speed and efficacy".*[1]

What we see now is that the concept of human rights has been gone beyond theoretical and philosophical debates and become a matter for internal and international politics over time; but it has always been subject to critical challenge.

On analysing the concept of human rights and conceptual problems arising from different perspectives taken to define the concept, the article takes a historical approach, as many Europeans argue gradual incarnation of human rights is the essence of history as a task to be fulfilled by history, [2] and human rights as a wave has not yet its culmination. [3]

Moreover what is expressed in this article should be regarded "denotative" or "descriptive", not "performative",[4] and can be accepted or rejected by readers.

Human Rights in Theoretical and Philosophical Senses

Given the concept of human rights cannot be defined and understood in isolation from definition of concept of right, it should be more appropriate to touch upon the meaning of a "right" before examining the concept of human rights. R. J. Henle, when trying to define a "right", points out that

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[1] R. Kapur, "Human Rights in the 21th Century: Take a Walk on the Dark Side", **Sydney Law Review**, Vol. 28, 2006, p.664.
[2] Jeanne Hersch, "Human Rights in Western thought: conflicting dimensions" in **Philosophical Foundations of Human Rights**, edited by UNESCO, 1986, p.139.
[3] J. H. Burgers, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century," **Human Rights Quarterly**, Vol.14, No.4, 1992, s. 447.
[4] J.F. Lyotard, **Postmodern Durum**, İsmet Birkan (çev.), BilgeSu Yayıncılık, 2013.

"We talk about a right to something or a right to do something. I have a right to a piece of property. My ownership of this piece of property does not refer to any ontological characteristics of property itself. If the right is viewed only in connection with the thing claimed, it makes no sense…In fact, the language of rights is legal language. The concept of a right is a legal concept and, indeed, a legal fiction. Law is not a purely theoretical discipline; it is a practical system for dealing with the public aspects of human relations…The concept of right is a constructional concept and functions in law somewhat as the mathematical constructs of physics do in natural sciences…These constructional concepts are not simple transcriptions of reality, but they have definite and justifying foundation in fact…What is the foundation for the conceptualized rights? They are derived from insights into the moral interrelationship between men, taken as individuals or as groups. This means that these concepts are expression of justice"[5]

In this definition, the first salient point drawing attention is that writer attributes a role to the concept of right in law like mathematics and physics' roles in natural sciences. From this perspective, we can come to conclusion that "right" is something already existing in nature and what people can do is just to discover it, not to invent it being upon the main differences between natural and social sciences.[6] Another salient point is that right is an expression of justice, without which justice is nothing.

Feinberg points out that "*in a world without rights persons would not be able to insist upon their claims but would be mere supplicants, so that such a world would be missing an important moral dimension*."[7] In this sentence, we see that Feinberg draws our attention to how the world would be without rights, that is, without legitimacy base for claims. While Feinberg relates rights to claims, Hohfeld regards rights not only as claims but also as powers, immunities and liberties.[8]

From the perspective of classical liberal view, Nozick says that "*individuals have rights and there are things no person or group may do to them (without violating their rights)*.[9]

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[5] R.J. Henle, S.J., "A Catholic View of Human Rights: A Thomistic Reflection", in **The Philosophy of Human Rights: International Perspectives**, A.S. Rosenbaum (ed.), Greenwood Press, 1980, p.89.

[6] For short information about differences between natural and social sciences, see Jan Ossenbrink and Annegret Stephan, **What is the difference between social and natural sciences?**, 2013, http://www.tim.ethz.ch/education/courses/courses_fs_2013/DocSem_Fall13/3_presentation,

[7] J. Feinberg, "The Nature and Value of Rights", **The Journal of Value Inquiry**, 4, p.243-257.

[8] A. Weale, **Democracy**, Palgrave, 2007 and W. N., Hohfeld, **Fundamental Legal Conceptions**, New Haven, Yale University Press, 1923.

[9] Weale, 2007.

These few examples of how the right is defined or explained show that the concept of right can be defined in various manners and from different perspectives. Although definitions of right differentiate, one point is apparent that we cannot analyse human rights in a philosophical manner without referring the concept of right; and different definitions of the concept of right can also guide us in our attempt to analyse what human rights are.

What are human rights?

Like definitions of right, there are various definitions/explanations of what human rights are. Let's give examples.

While trying to define human rights, J. Griffin underlines that

"According to tradition, a human right is one that a person has, not in virtue of any special status or relation to others, but simply in virtue of being human. But to apply the term "human right" we have to be able to tell what rights we have simply in virtue of being human, and we have, in fact, little agreement about the relevant sense of "human". We are left with very many cases in which we have no agreed criteria for whether the term is being correctly or incorrectly used, which is why supposed human rights have proliferated so uncontrollably. Of course, "human right" is what philosophers used to call and "essentially contestable concept", but that a concept is essentially contestable does not relieve it of the need to be tolerably determinate."[10]

The first sentences of Griffin's paragraph leads us to consider that the definition of human rights aligns with the nature of right, that is, while the right existing in nature cannot be invented just can be discovered, human rights exist due to nature and a person has human rights just because of being human.

While writing on the human rights and comprehensive humanism, I.C. Sharma points out that "*human rights are invariably linked with human obligations and are indispensable to human dignity*."[11] Sharma does not give us an exact definition of human rights but underlines the salient feature of human rights, that human rights are a kind of expression of dignity. A. S. Rosenbaum defines human rights "*as the ultimate legitimate basis for a universal human community. Human community refers to ideal association of human persons that is conceived for the individual and collective benefit of its members*."[12] In Rosenbaum definition, political dimension of the concept of

[10] J. Griffin, "Rights in Conflict" in **Rights in Reason**, M. Friedman, L. May, K. Parsons, J. Stiff (eds.), Kluwer Academic Publishers, The Netherlands, 2000.
[11] I. C. Sharma, "Human Rights and Comprehensive Humanism", in **The Philosophy of Human Rights: International Perspectives**, Greenwood Press, 1980, p.4.
[12] A.S. Rosenbaum, **The Philosophy of Human Rights: International Perspectives**, Greenwood Press, 1980, p.4.

human rights is seen and a function of human rights as a legitimizing factor for political entities and governments is underlined.

It is commonly agreed that roots of human rights are traced to classical Greek and Roman philosophy. This does not mean the concept of human rights in Ancient Greek and Roman Philosophy was understood in a way that it is commonly understood today. Nonetheless, these different understanding, maybe due to times, should not prevent us from admitting that key elements of human rights were provided at that times. On how human rights are interpreted in Ancient Greek and Roman philosophy, A.S. Rosenbaum writes

"...only citizens of the city state-less than 50 percent of Athens's population-were the beneficiaries of the natural law. In their general defence of such inequalities, Plato and Aristotle ironically introduced numerous definitions of equality into the philosophical discourse. These various conceptions of equality function as key elements in human rights today: equal respect for all citizens, equality before the law, equality in political power and in suffrage, equality of civil rights. These early natural law principles were believed to be norms for virtuous social relations...The Roman concept of equality broadened the scope of rights issues in practical affairs to include more beneficiaries than in the Greek tradition but without altering the customary Greek view of nature."[13]

In addition to giving short information in what ways human rights were understood and practised in Ancient Greek and Roman era, Rosenbaum implies that main source of human rights is natural law as a law of universal order. In this point let me open a parenthesis, if there were certain arguments to defend inequalities in Ancient Greece, this means that some people in Ancient Greece were aware of something relating to their understanding of human rights and human rights practices were wrong and needed to be defended. In this sense we can argue that Greeks attempted to verify their both understanding and practices of human rights which they regarded as contrary to natural law. If some philosophers focused on equality on their works although in practice equality was not a respected principle in Ancient Greece, it was certainly clear that philosophers at those times tried to conceptualise unwritten natural law principles such as equality without worrying about how to put these principles into practices.

In this context, R. J. Henle holds that

"The value and finality of man is thus intrinsic to his nature and can be philosophically recognized independently of revelation or theology, as it was, at least to a large extent, by Plato, Aristotle, and the Stoics... For the same reason, the rights of man are inalienable because they are based on human

[13] Ibid., p.10.

nature. They are not dependent on law, ecclesiastical or civil, or on any covenant or basic document."[14]

and in this manner he underlines human rights are not be necessarily recognised by any written documents regardless civil or ecclesiastical and also tries to make us understand why philosophers worked or can work on human rights.

In the Middle Ages, as the doctrine of natural law was interpreted in a theological way, the concept of human rights gained a religious dimension inevitably such as Saint Thomas Aquinas regarded the system of natural law as divinely willed. During the Middle Ages, that philosophers started to work on human rights from both angles of natural law and also religion is observed given that they thought natural law is based on the nature of things and on the constitution given by Jesus Christ to His Church, not formulated by legislators.[15] R. Harries points out that

"If you look at some of the writings of the early Church fathers, it is interesting to note that the kind of things they say are what we today would call positive human rights. They saw these not solely in terms of the largesse of those who have for those who have not- a sort of pity and compassion- but as a matter of elemental justice. For them, God had bestowed the goods of the earth on humanity as a whole. All things were, in principle, in common, so to meet someone's need for the basic necessities of life was not an act of charity but of justice."[16]

At this point what we see is philosophers have referred to natural law when defining and conceptualising human rights since Ancient Greek, and natural law is believed to be derived from Divinity in the Middle Ages so that human rights - at least to some extent- transformed into ecclesiastical matters. In short, natural law is a key element for human rights regardless from perspective of Ancient Greek philosophers or perspective of Middle Ages philosophers. For that reason human rights can be claimed as universal, unchangeable, untouchable and supreme norms.

Nonetheless key position of natural law for human rights has been also questioned and criticised -even if not totally rejected-, as Richard Harries points out

"Philosophers have been very suspicious of it because they feel that one cannot actually give any kind of real meaning to such a concept. Most

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[14] R.J. Henle, 1980,s.88

[15] See Canon Law, Encyclopedia Britannica and Stephen Kuttner, **Natural Law and Canon Law,** http://scholarship.law.nd.edu

[16] R. Harries, "The Complementarity Between Secular and Religious Perspectives of Human Rights" in **Does God Believe Human Rights?**, N. Ghanea, A. Stephens and R. Walden (eds.), Martinus Nijhoff Publishers, 2007, p.27

famously Jeremy Bentham said that to talk of rights as natural and inalienable is nonsense upon stilts."[17]

Bentham contends "*Right, the substantive right, is the child of law; from real laws come real rights; but from imaginary law, from "law of nature"can come only "imaginary rights*."[18] This is a clear-cut example for how some philosophers criticised and even tried to reject natural law.

During the seventeenth century, some philosophers tried to secularise natural law theory rather than to reject it through interpreting the concept of natural law in a secular manner. In this context, Rosenbaum says

"Throughout the seventeenth century and supported by the philosophy of rationalism, natural law came to be understood as protective of the subjective interests and rights of individual persons. This new interpretation, most prominently articulated in the writings of John Locke, was a significant departure from earlier theories in which natural law was taken to be merely a natural set of objective norms. It was Locke who used to theory of natural law as a foundation for a theory of natural rights, and who claimed that individual possesses, by nature, the rights to life, liberty and property…"[19]

Secularisation of natural law theory is definitely a by-product of the Enlightenment, not fortuitous. The secular understanding of natural law reflects main features of the Age of Enlightenment or Age of Reason when inquiring mind *"that wanted to know and understand through reason based on evidence and proof"* is seen as a tool *"to understand the natural world and humankind's place in it …"*[20] In the seventeenth and eighteenth century, not just natural law was secularised, but also natural law was challenged, its key position for human rights was shattered. To consider another example, during the American and French Revolutions, Immanuel Kant criticised strongly natural law regarding to human rights. In Kant's moral philosophy, "*determination by natural laws is conceptually incompatible with being free in a negative sense*."[21] In Rosenbaum's words

"…in the natural law tradition, rights were seen to be claims justified by the natural law and supported by the related natural duty. But for Kant such a right claim made by an individual on behalf of himself could be too reflexive, too dependent upon circumstance, to be capable of being willed as a universal law of nature (in its broadest sense). Nevertheless, in distinguishing

[17] Ibid., 22.
[18] A. Sen, "Elements of a Theory of Human Rights", **Philosophy and Public Affairs**, Vol.32, No.4, 2004, p.325.
[19] Rosenbaum, p. 12
[20] Hackett Lewis, **The European Dream of Progress and Enlightenment,** http://history-world.org/age_of_enlightenment.htm, 1992.
[21] Stanford Encyclopaedia of Philosophy, **Kant's Moral Philosophy**

between the laws of nature (of what is) and the laws of freedom (what ought to be), Kant placed the study of ethics outside the realm of natural law."[22]

Views of Rousseau who places the human rights outside the realm of natural law like Kant's are quite different. Even Melzer argues that "*Rousseau regards natural law other forms of 'private morality', as ineffectual, invalid, an in practice dangerous tools of oppression and subversion."*[23] According to Rousseau, the meaning of human rights is based on the general will of society, he points out that "*individual freedom and equality would predominate if, and only if, people obeyed the laws of society*."[24] In his words,

"Laws are, strictly speaking, the conditions of civil association. The people being subject to laws, ought to be their author: The conditions of society ought to be regulated by those who unite to give it form."[25]

With regard to Rousseau views, we can say that Rousseau as a philosopher arguing that men is born free asserts that men should be governed by the law legislated by himself, not by necessarily natural law.

With regard to evolution of the concept of human rights during the Enlightenment era, we see that there are two different but interrelated approaches to natural law. First; rejection of the idea of natural law and natural rights. Second; secularisation of natural law. But whatever the approach is, the main matter for hot debates relating to human rights is natural law.

After the seventeenth and eighteenth century when the natural law was secularised and also challenged, in the nineteenth century when Europe underwent a transformation caused by the technological innovations, industrial capitalism and conflicts between social classes and the gap between the rich and the working class, debates over human rights were shaped by mainly social inequality[26] and an emphasis placed on natural law became less intense. On the scene there was "liberalism vs socialism". Liberals linked human rights to human happiness to a large extent and their point of reference is individual rather than community or anything else. For example Stuart Mill as a distinguished representative of liberal view upholds human rights as being "*in the best interest of human happiness*",[27] and pointed out "*Every right is a benefit; a command to a certain extent over*

[22] A. S. Rosenbaum, p.14.
[23] Arthur M. Melzer, "Rousseau's Moral Realism: Replacing Natural Law with the General Will", **The American Political Science Review**, Vol.77, No.3, 1983, p.633.
[24] A.S. Rosenbaum, p.14.
[25] I. C. Sharma, p.104.
[26] M. R. Ishay, **The History of Human Rights: From Ancient Times to the Globalization Area**, University of California Press, 2008, s. 118.
[27] A.S. Rosenbaum, p.17.

the objects of desire". [28] Even some thinks that human rights are properties of persons, as Locke's words, human rights are non-visible properties of personhood.[29] Liberals' understanding of human rights is criticised being "atomic individualism" and confusing human rights with the conditions for happiness. On the other hand, in the Marxist socialist view reference point is not the individual, is "collectivity" whose individual members were creatures of social circumstances, acquiring social rights through community affiliation. [30]

On human rights from the Marxist socialist perspective A.S. Rosenbaum says

"In the Marxist view, freedom could only mean the liberation of the working class from capitalist exploitation. All else, save the ultimate goal of classless humanism, was subordinate. Equality in the Marxist view meant social (not political) equality. Such a concept could not be conceived apart from the basic institutions of the collectivity and of classless society that, by its nature, guarantees all members the equal right to satisfy basic needs and to contribute to the collective effort of production…"[31]

Who Holds Human Rights? Who are Perpetrators of Human Rights Abuses?

In the nineteenth century, the difference between liberalism and socialism regarding what/who is the reference point came to the fore and to whom human rights pertain became a hot topic for human rights debates. Who are or can be holders of human rights? If we take up this question lexically, notion of human (human being) defined as "*a man, woman, or child of the species Homo sapiens, distinguished from other animals by superior mental development, power of articulate speech, and upright stance*"[32] leads us to think that just the human being can be holder of human rights, as J. Donnely points out that only individuals can be human right holder while groups or nations can have rights, but never human rights.[33]

But do we have to take up this issue just lexically? Putting lexical way aside, certain scholars argue that while some rights pertain to

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[28] M.Escamilla**, Rights and Utilitarianism. John Stuart Mill's Role in its history**, http://etudes-benthamiennes.revues.org/192, 2008.

[29] B. Orend, **Human Rights: Concept and Context**, Broadview Press, Canada, 2002, p.18.

[30] A.S. Rosenbaum, p.20.

[31] Ibid. 21.

[32] Oxford Dictionaries, http://www.oxforddictionaries.com/definition/english/human-being

[33] A.B. Fields, **Rethinking Human Rights for the New Millennium**, Palgrave England, 2003, p.101.

individuals some pertain to groups; so the question of who are holders of human rights is just an issue directly relating to the question of what are rights at issue. But in this context, another question arises "can a right borne by a group be a human right?"[34] This question can be answered in two different manners. First, rights borne by groups cannot be human rights, as human rights just pertain to human beings. Second, human rights can take collective forms, not just individual forms; as some argue that "*the reasons that lead us to ascribe rights to individuals are also reasons why we should recognise certain forms of group rights*"[35]

Another issue as important as the question of who are holders of human rights is who are violators of human rights. Generally speaking, concept of power is certainly referred in analyses of who violates or can violate human rights and power is treated as state's sovereignty assets.[36] That is why some scholars argue that state is the main perpetrator of violation human rights of its citizens and human rights are limited by its institutions due to fact that it has absolute sovereignty and power.[37] Attempts at international level, such as conventions and agreements and norms like Responsibility to Protect, justify these kinds of arguments. Nonetheless the state should not be regarded as a sole perpetrator of human rights violations. Perpetrators of human rights violations can be any entity, any non-state actor or any person. As A. B. Fields points out

"…there is nothing in our conceptual approach to human rights that would indicate that the offenders must be states. Other social entities and indeed individuals can be violators of human rights. If we examine the international rights documents, which were drafted by representatives of states and are supposed to bind states to respect human rights, there is nothing in those documents that says that only states can be violators."[38]

During the debates on who are holders and violators of human rights have continued, the concept of human rights has gained more popularity and went beyond the philosophical studies and became one of central issues in daily politics as Milan Kundera says "*I don't know a single politician who doesn't mention ten times a day the fight for human rights or*

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[34] P. Jones, "Human Rights, Group Rights, and Peoples' Rights", **Human Rights Quarterly**, Vol. 21, No.1, 1999.
[35] Ibid.
[36] J. Pae, "Sovereignty, Power, and Human Rights Treaties: An Economic Analysis, **Northwestern Journal of International Human Rights**, Vol. 5, No.1, 2006, p. 71. 70-95.
[37] B.K. Goldewijk, and B. Fortman,, **Where Needs Meet Rights**, Geneva: WWC Publications, 1999, and M. E. Erendor**, Human Rights and Its Paradoxes**, Strategic Outlook, 2012.
[38] A.B. Fields, p.124.

violation of human rights."[39] The reason for increasing popularity of human rights in politics may be a result of increasing human rights violations, that is the more human rights are violated, the more human rights discourses can become popular, so that politicians make human rights the subject of daily politics. Another reason for increasing popularity of human rights in politics may be related to debates over who violates human rights; as stated previously, some scholars strongly argue that the main perpetrator of human rights abuses is the state, thus politicians try to refute these kinds of arguments and to show the state they govern respects for human rights.

From the beginning of the twentieth century, human rights issue has started to be handled in a more comprehensive way and been more internationalised given that this century has witnessed dramatic events. The World War II and the Nuremberg war crimes trials underlined the need for a global commitment to a global human rights regime, which goes beyond the doctrine of absolute sovereignty of states.[40] Conversely the Cold War –if partially- prevented the formation of global understanding of, and to global commitments to human rights given that while Western human rights law focused on political and civil rights, socialist and communist countries focused on economic and social rights. This point underlines that global commitment to global human rights necessitates states to share the same values and to have strong mutual political and economic relations. The end of the Cold War partially helped the concept of human rights to shift from regional/domestic daily political discourse to global discourse. [41]

In other words, human rights as a philosophical concept and later a religious/secularised/globalised matter arose as a wave exerting a global political influence. At the same time, human rights became one of the essential elements of democracy. Certainly there are two-way relationship between democracy and human rights; while governments legitimises themselves as democratic through respecting for human rights, in turn democracy provides the environment for protection of human rights effectively.

Human Rights at International Level

I mentioned previously the arguments that the state is a sole perpetrator of human rights abuses. In addition to these kinds of arguments,

[39] A. E. Soon Tay, "Human Rights and Wrongs", in **Rights in Reason**, M. Fiedman, L. May, K. Parsons, J. Stiff 8eds.), Kluwer Academic Publications, The Netherlands, 2000, p.121.

[40] **Overview:Developing International Human Rights in the 20th Century**, Center on Law& Globalization,

[41] Ibid.

due to some dramatic events the twentieth century witnessed regarding the violations of human rights within states and by the state, human rights have been approached at international level and many global and regional human rights treaties have been concluded with corresponding enforcement mechanisms while national sovereignty was challenged. This international approach may be interpreted as an international legislation or codification process, which transforms the natural human rights law into positive international law and also as attempts at international level to define human rights norms with the aim of identifying what is legal and illegal and restricting the state's power.

At this point, let me refer to D.P. Forsythe, who says

"human rights in a positive or empirical sense is a subject defined by international law. Human rights is what the laws say it is" and he continues *"…human rights are defined by international agreements…there are the core United Nations agreements, the supplementary United Nations agreements, the law of human rights in armed conflict, and national agreements."*[42]

Forsythe also points out that "*the first multilateral treaty on human rights arouse out of war, and the oldest branch of human rights law is that devoted to protecting human rights in armed conflict.*"[43] This way of thinking mirrors legal positivism in international law and also a realist conception of international relations, that deals with what is legal and illegal, not what is right and wrong. At this point, it must be emphasised that, in Totaro's words, "*positivism in international law has not been accepted among most international legal commentators*".[44] From this angle, positivist conception of human rights is and should be criticised due to fact that it distinguishes between what is and is not international human rights and bearing a risk of ignoring "*moral reasoning can determine how the (human rights) law ought to be*".[45] Although the legal positivism in international law and international human law is criticised and not commonly accepted, legal positivism makes human rights enforceable. A. E. Soon Tay, in this context, writes

…an approach borne blurring the distinctions between moral, legal and human rights. The most misunderstood and controversial aspect of human rights theory and perception is the distinction between human rights as a species of moral rights and human rights as bases of legal rights…Legal rights are laws of a state while moral rights are claims of people. Legal rights

[42] D. P. Forsythe, **Human Rights and World Politics**, University of Nebraska Press, 1983, p. 3 and p.20.
[43] Ibid., p.4.
[44] Martin V. Totaro, "Legal Positivism, Constructivism, an International Human Rights Law: The Case of Participatory Development", **Virginia Journal of International Law**, Vol.48, No.4, 2008, p. 730.
[45] Allen Buchanan, **Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law**, Oxford University Press, United States, 2004.

by definition are enforceable, while moral rights may not be. Some moral rights are enforced, becoming legal rights, while others are not."[46]

Nonetheless, the extent to which legal human rights make human rights enforceable has been questioned. This is a two-fold matter. First is related to "*which rights are regarded as universal, which should be given priority,… which call for international pressure*."[47] Second is whether global approach to human rights or to internationalise human rights through international treaties can effectively guarantee human rights. While some critics argue that international regimes can provide respect for human rights, some contend that human rights treaties cannot make any actual difference in reality.[48] In reality we can observe that some countries cannot adopt internationally recognised human rights through arguing that these rights contradict their culture and religious heritage.[49] So, as Neumayer points out, improvement of human rights mainly depends on how democratic the regime is and how civil society is strong and devoted to human rights in the country[50] to contend that international law has its limits for the protection of human rights.

A Concluding Remark

The concept of human rights is the result of philosophical and theoretical debates. But this concept has gone beyond the philosophical and theoretical debates and become a matter for internal and international politics over time; and in Nickel's words, the concept of human rights which has long been a common among philosophers and lawyers, has become part of the vocabulary of the general public.[51]

In this article while the evolution of the concept of human rights is analysed, it is argued that theory and philosophy of human rights have been dominated mainly by two approaches; first approach is the understanding of human rights from the perspective of natural law. Second approach is the positivist conception of human rights, and this approach has been fed by internationalisation/ globalisation of human rights.

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[46] A.E. Soon Tay, p.132.
[47] Ibid.122.
[48] E. Neumayer, "Do International Human Treaties Improve Respect for Human Rights", **Journal of Conflict Resolution**, Vol.49, No. 6, p. 925-953.
[49] L. M. Friedman, "The Internationalization of Human Rights by David P. Forsythe" **Boston College Third World Law Journal**, Vo.13, No.1, 1993, p.191.
[50] E. Neumayer, "Do International Human…
[51] J. W. Nickel, **Making Sense of Human Rights: Philosophical Reflections on the Universal**, University of California Press, California, 1987.

There is no conclusion here for mainly two reasons. Human rights as a wave exerting political influence at international level, as Burgers[52] argues, do not have its culmination. And, as Lyotard[53] points out, an expert can come to conclusion, but a philosopher who is not an expert cannot, hence any study including a philosophical subject can hardly reach a conclusion. In place of conclusion, I can say that, as pointed out in the introduction, what is said in this article is "denotative", that means it should not be necessarily accepted, it can be easily criticised or rejected by readers.

[52] J. H. Burgers, "The Road to San Francisco…
[53] J.F. Lyotard,p.9.

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