

Natural Law and Natural Rights, 1600-1800

Davenant Hall--Philosophy

Hilary Term 2021

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Course Description

We currently seem surrounded by intractable arguments in public life over conflicting rights. At one end of the spectrum, so-called conservatives can be found loudly asserting their God-given rights against any perceived government overreach. At the other, so-called liberals can be found insisting on their right to self-identify however they please, to be shielded from contrary opinions, and to retreat to a “safe space” when it all becomes too much. In the post WW2 West, language of “human rights” has become our dominant (if not only) way of thinking about ethics – and not without cause. The twentieth century is full of lessons of what happens when human rights are ignored.

Yet a shift from traditional moral language of “natural law” to modern language of “human rights” has raised red flags among Christian ethicists. Is “rights” language intrinsically subjectivist and individualist? Or is it deeply woven into Christianity?

Through close reading of primary texts, this course will engage key Christian political theorists from the Reformation to the American Founding, tracking this shift, asking how significant it is or is not, and considering its relevance to Christian public witness today.

Course Format

The format of the course will include occasional short lectures, but with a focus on longer guided discussion of the assigned texts. Readings will range from 60 to 90 pages per week, and we will proceed through them in chronological order with an inductive method of study—engaging each text on its own terms while looking for common themes and points of divergence. Students will be expected to come having read and engaged with the text selection for the week, and with thoughts prepared to contribute.

Classes will meet via Zoom for two hours each week and will be recorded for later viewing by students who cannot participate (but not for dissemination outside of class). Additional student participation and instructor interaction will take place on a Discord discussion board.

Course Objectives:

Objectives for this course include: (1) to understand the ways the concept of natural law functioned in the early modern period and its relation to other kinds of law; (2) to understand the ways the concept of natural rights functioned in the early modern period and its relation to other kinds of rights; (3) to identify significant watersheds in the history of western thought about rights that may have marked a departure from earlier Christian ethics; (4) to assess how consequential these shifts were and were not; (5) to critically interact with contemporary champions and skeptics of rights language on the basis of this historical inquiry; (6) to evaluate the intellectual foundations of the American Founding; and (7) to consider the appropriate uses of rights language in moral and political discourse today.

Course Requirements (for for-credit students):

Participation (20%): Attentive and sustained participation in class is the primary requirement. For-credit students may have one excused absence.

Reading Responses (30%): All students are requested and for-credit students are *required* to complete the assigned readings each week. Students will submit a Reading Response each week offering a brief synopsis and critical reflections on the main reading for the week (600-1000 words).

Term Paper (50%): For-credit students are required to submit a 3,000-5,000 word term paper by April 2. Papers will combine limited secondary source research with attentive primary source engagement and thoughtful analysis. They may be primarily exegetical, historical, or theological-philosophical in their orientation, or blend elements of all three, though the topic should be approved with the instructors in advance.

Course Texts

The student is not required to purchase any texts, as all extracts are either available online or will be supplied by PDF. However, none of these texts are expensive, and the student is encouraged to buy hard copies to the extent that their budget permits.

Johannes Althusius, *Politica* (1603), edited and translated by Frederick S. Carney. Liberty Fund, 1995. <https://oll.libertyfund.org/title/althusius-politica>

- Francisco Suarez, *Of Laws and God the Lawgiver* (1612). In *Selections from Three Works*, edited by Thomas Pink. Liberty Fund, 2015.
<https://oll.libertyfund.org/title/selections-from-three-works>
- Hugo Grotius, *The Rights of War and Peace* (1625), vol. 1. Liberty Fund, 2005.
<https://oll.libertyfund.org/title/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>
- Baruch Spinoza, *Theological-Political Treatise* (1670), edited by Jonathan Israel. Cambridge University Press, 2007. EXCERPT PROVIDED BY PDF.
- Samuel Pufendorf, *The Whole Duty of Man and the Citizen According to the Law of Nature* (1673), edited by Ian Hunter and David Saunders. Liberty Fund, 2003.
<https://oll.libertyfund.org/title/tooke-the-whole-duty-of-man-according-to-the-law-of-nature-1673-2003>
- John Locke, *Second Treatise on Civil Government* (1690), in *Locke: Political Writings*, edited by David Wootton. Hackett, 2003. EXCERPT PROVIDED BY PDF.
- Christian Thomasius, “On the History of Natural Law Until Grotius” (1707). In *Essays on Church, State, and Politics* (170, edited and translated by Ian Hunter. Liberty Fund, 2007. <https://oll.libertyfund.org/title/grunert-essays-on-church-state-and-politics>
- Emer de Vattel. *The Law of Nations* (1757), edited by Bela Kapossy. Liberty Fund, 2008.
<https://oll.libertyfund.org/title/whatmore-the-law-of-nations-lf-ed>
- James Wilson, *Lectures on Law* (1790), in *Collected Works of James Wilson*, vol. 1, edited by Kermit L. Hall and Mark David Hall. Liberty Fund,
<https://oll.libertyfund.org/title/hall-collected-works-of-james-wilson-vol-1>
- Nigel Biggar, *What’s Wrong With Rights?* Oxford University Press, 2020. EXCERPT PROVIDED BY PDF
- John Witte, Jr., “From Bentham to Biggar. Skepticism about Rights Skepticism.” 2021.
<https://canopyforum.org/2021/06/11/from-bentham-to-biggar-skepticism-about-rights-skepticism/>
- Oliver O’Donovan, “The Language of Rights and Conceptual History,” *Journal of Religious Ethics* 2009. <https://www.theologyethics.com/2013/12/14/the-language-of-rights-and-conceptual-history-2009/>

Course Schedule

Week	Dates	Key Topic	Assigned Readings
1	1/9-15	Natural Law and Natural Rights: The Contemporary Debate	O'Donovan, "Language of Rights" Biggar, <i>What's Wrong with Rights</i> , 10-16, 33-55 Witte, "From Bentham to Biggar"
2	1/16-22	Natural Law and Natural Rights Before Grotius	Thomasius, "On the History of Natural Law Until Grotius," 1-48. Althusius, <i>Politica</i> I, X-XVII (pp. 17-26, 79-91)
3	1/23-29	Francisco Suarez I: The Nature of Law	Suarez, <i>Of Laws and God the Lawgiver</i> , I.1-7 (pp. 17-115)
4	1/30-2/5	Francisco Suarez II: Natural Law and Positive Law	Suarez, <i>Of Laws and God the Lawgiver</i> , II.14, II.18, III.1-3 (pp. 301-25, 384-92, 415-440)
5	2/6-12	Hugo Grotius: The Turn to Rights	Grotius, <i>The Rights of War and Peace</i> , Preliminary Discourse, Book I (75-179)
6	2/13-19	Rights and Duties after Hobbes: Spinoza and Pufendorf	Spinoza, <i>Tractatus Theologico-Politicus</i> , ch. 16, part of 17 (195-215) Pufendorf, <i>The Whole Duty of Man</i> , Preface, I.1-4 (pp. 15-68)
7	2/20-26	Pufendorf on Rights and Duties (cont.)	Pufendorf, <i>The Whole Duty of Man</i> , I.6-13; II.1, 5, 6 (pp. 69-139, 166-73, 187-97)
8	2/27-3/5	States of Nature and Natural Rights: Locke and Vattel	Locke, <i>Second Treatise</i> , chs. 1-5 (pp. 261-85) Vattel, <i>Law of Nations</i> , Preliminaries (67-78) I.11-13 (pp. 145-197)
9	3/6-12	Natural Law and Rights in the American Founding: James Wilson	Wilson, <i>Lectures on Law</i> , I.2-4 (pp. 464-548)
10	3/13-19	James Wilson (continued)	Wilson, <i>Lectures on Law</i> , I.5, 7 (pp. 549-584, 621-644)