



Written by [Charles Scaliger](#) on April 18, 2016

Published in the April 18, 2016 issue of [the New American](#) magazine. Vol. 32, No. 08

American Principles

Where Do Rights Come From?

The notion of freedom makes no sense, in the political sense of the term, absent a concept of human rights. Rights are to freedom what air is to breathing; without rights, freedom would be as inconceivable as life in the vacuum of space.

A right being something to which a person is entitled, the most significant feature of a right is its origin. For example, if I have a legal claim on an inheritance, it is because the legator has left me a bequest in his will. Such a right is specific to me and the other legatees. No one else is entitled to it; it owes its existence entirely to the decision of the legator.

A right may also be conferred upon an entire class of people, such as the whole citizenry of a country, state, or other legal jurisdiction. In the United States and many other countries whose legal systems ultimately derive from the English common law, all citizens enjoy the right to a trial by jury — a right not acknowledged by many other legal traditions, such as those of continental Europe, most of which ultimately stem from Roman codes of law like those of Justinian and Theodosius. Such statutory rights as trial by jury are manmade, originating in legislatures and legal precedents over centuries of experience.

Many statutory rights also impose obligations on others to provide them, and require coercive means to implement. For example, the comparatively modern “right to healthcare” that has become so widely recognized in the socialist countries of Europe and elsewhere implies an obligation for someone to provide that healthcare at a cost that all can afford. So-called socialized medicine therefore imposes a requirement on physicians to provide healthcare at a cost dictated by outside authorities, and on taxpayers to pay for it. Such rights, which oblige action on the part of some party, are called “positive rights,” and often take away, in the aggregate, more freedom than they confer.

But there is another kind of right, which we only conflate with man-made “rights” by accident of language — natural, or God-given, rights. Natural rights we might also call “originary rights,” because all just man-made rights derive their validity from them. Natural rights are not specific to any civil jurisdiction, demographic, or interest group; they apply to every member of the human race, regardless of whether they are acknowledged by civil authorities. And just as man-made law creates man-made rights, so too the “law of nature and nature’s God” confers natural or God-given rights. They were often called by the American Founders “unalienable rights,” meaning rights that cannot be taken away by any human agency, because they come from a source higher than man-made authority and cannot be





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legitimately revoked by any earthly power.

All of us are acquainted with the laws of nature. The laws of physics and chemistry keep our planet in orbit around the sun and allow the cycles of weather and seasons to follow their ordained course. Laws of biology allow cells to divide, tissue to heal, and species to reproduce after their own kind.

For every living thing, from the minutest insect to man himself, life is the most important gift. All other endowments enjoyed in mortality are subordinate to life itself, which is why, in every type of living thing, the desire to preserve and perpetuate life is the most fundamental craving. Living things seek to prolong their own lives, even in sickness, as long as they can, all the while striving to bring forth offspring.

That these impulses are both universal and good it is fatuous to deny. Inasmuch as the laws of nature, ordained by the Creator, have created the conditions for human life and for its perpetuation, all human beings enjoy the right to life. And a right to life requires also a right to self-defense. These are two of the most fundamental of all natural, or God-given, rights. If man in his unreason denies or sets aside either of these, his other unalienable rights will not long be respected. Only when individuals commit capital or other infamous crimes, or under conditions of just war, is the state justified in depriving men of their lives.

Other unalienable rights recognized by the Founders include the right to freedom of religious worship, the right to freedom of speech, and the right to own property. All of these rights are “negative” rights in that their exercise does not require the compulsion of any third party to provide any good or service.

While it is theoretically possible to arrive at the doctrine of unalienable, natural rights without acknowledging the role of the Creator, in practice most irreligious or non-religious people will persuade themselves that rights are entirely premised on man-made laws. This bias against God-given rights is pervasive in modern law schools, universities, and halls of government.

But there is a God who has created us and is the source of our unalienable rights. For any man-made law to be just, it must be framed so as not to trespass on our God-given rights. In this way, it is possible to have earthly government that protects liberty rather than seeking to limit it, and whose magistrates hold themselves subordinate not only to popular but also to divine authority — rather than seeking to set themselves above all accountability.

If rights come ultimately from government and not from God, as many of our modern political and jurisprudential sophisticates believe, then government — not God — becomes the final arbiter of rights and freedoms. Rights thus understood to be conferred by government can (and, in the long range, will) be revoked by government at the pleasure of its magistrates. Man-made rights endure only as long as they are politically expedient, but God-given rights are impervious to popular fads and perceptions. Thus, for example, the right to keep and bear arms, a God-given right that is protected (but not granted) by the Second Amendment, and which flows from the right to self-defense, has fallen out of fashion among so-called “liberals,” because they believe it is nothing more than a man-made statute that is no longer relevant.

A society in which the true origin of rights is not understood will soon descend into bondage, but a society where it is understood will enjoy the God-given blessings of liberty.



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