Abstract

The aim of the thesis is to answer the question of what do we actually claim, when we claim that certain subject does, or on the contrary does not have certain rights. I attempt to solve the question through an analysis of the traditional conflict in the theory of jurisprudence between natural and positive law. While positivism derives the existence of rights from social facts natural law theories claim that certain rights can be deduced directly from (human) nature, and that these rights are universally acceptable. The first chapters are accordingly dedicated to classical formulations of positivist and naturalist positions and explore their broader theoretical assumptions. Using a dialectical procedure inspired by Hegel's Phenomenology of Spirit, I endeavour to uncover the inner tensions of the introduced approaches, which point to the justification, or even necessity of the existence of the alternative approaches. A historical excursion into the times of the French revolution follows, which shows how the problems of the presented theories manifested themselves in political practice. The second part of the work discusses various types of reactions to the inability of the tradition to solve the conflict between natural and positive law. I present Griffin's theory of human rights which seeks a solution through perfecting the natural law tradition, then Hart's and Raz's formalist solution, and finally Dworkin's theory, which brings normativity back into play in an original manner. On the basis of this discussion, I finally formulate my own understanding of right as a relation between empirically existing institutions with specific formal structure and a normative belief of the subject about the authority of these institutions.