



The Philosophy of Right from a Legal Perspective

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Abstract

The concept of "right" is one of the oldest and most complex concepts discussed by philosophy and law together. Right cannot be understood in isolation from the social, political, and value-based system; rather, it is the cornerstone of building relationships between individuals and society, and between the ruler and the ruled. Hence, the philosophy of right emerged as a field of knowledge that intersects with ethics, politics, and legal jurisprudence, where philosophers and jurists have sought to define the nature, source, scope, and limits of right.

This article therefore aims to explore the dialectical relationship between the philosophy of right and law, as one of the central problems in philosophical and legal thought. The research proceeds from the premise that right represents a supreme human value rooted in freedom and justice, while law constitutes the institutional tool that translates these values into binding, enforceable rules. Hence, the central question arises: Does right precede law and grant it legitimacy, or does law create right and determine its content?

The study explores the philosophical roots of the concept of right throughout the ages, beginning with Aristotle, who linked right to justice; Kant, who considered it an external sphere of freedom; Hegel, who viewed law as an objective embodiment of right; and contemporary philosophies focused on human rights and social justice. The article also demonstrates how justice represents a fundamental criterion for assessing the legitimacy of laws, and that law may lose its legitimacy when it is detached from the spirit of right and transformed into a tool of domination or discrimination.

The study concludes that the philosophy of right gives law its value-based and normative dimension, while law grants right its binding and regulatory

power. Therefore, the relationship between the two is simultaneously complementary and dialectical: right is the goal, and law is the means that embodies this goal in social reality. The article emphasizes that integrating the philosophy of right into law remains necessary to achieve a balance between individual freedom and the public interest, and between moral standards and positive norms, especially in light of the contemporary challenges facing societies. Moreover, the scope of rights in laws is only a private right, with no public or joint right recognized, which is the position of individualism. If they had advocated public right (societal right), this would have undermined their philosophy, which holds that this right is not, for them, as ancient as private right. Rather, its existence is linked to the existence of society, and law is necessary for the existence of organized societies. Therefore, right exists subsequent to the existence of society and law, and thus its source is either society or law, which contradicts their philosophy. Since public right is not recognized, joint right is also not recognized, because it is the product of the recognition of the existence of two rights, public and private. As for social law, it does not contain private right, but rather a public right, and private rights are costs and duties incumbent upon the individual for the benefit of all. Furthermore, the study demonstrated that the source of right is human will and nothing else. In individualist philosophy, the individual is its source, in social legal philosophy, society is its source, and in legal philosophy, the ruler is its source. Even in the philosophy of natural law, with its religious orientation, we find that the individual is the source of right. He is the one who expresses his self, which is his self-image, laden with a particular culture, built on specific morals and beliefs as a result of his influence within a particular environment. He is the one who expresses natural law. Consequently, the individual will construct his law in accordance with his self-image. Therefore, natural law is consistent with social objectives, based on the premise that law is only known within a social milieu. If human will is the source of right, then it is even more appropriate for it to be the source of law, which is nothing more than a set of general, abstract, and binding social behavioral discourses.

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Introduction

The concept of right occupies a pivotal position in human thought, as it is one of the concepts most closely connected to the social, political, and legal existence of man. A right is not merely an individual demand or a privilege granted by law; rather, it is the foundation of human relations and the source of values that govern interactions between individuals and groups. Hence, the philosophy of right arose as the philosophical field that studies the nature of rights, their justifications, and their relationship to law as an institutional framework that guarantees their exercise and protects them from violation.

Since ancient times, philosophers have raised fundamental questions about the relationship between right and law. Aristotle linked right and justice as the goal of every legal system, while the Stoics established the concept of "natural law" as the basis for rights that transcend any positive legislation. Modern philosophy has offered deeper insights. Kant viewed right as the external sphere of freedom, and law as the embodiment of a universal moral duty, while Hegel believed that right can only be achieved objectively through the state and law.

In the modern era, with the rise of the values of freedom, equality, and human dignity, the debate over the philosophy of right has become more closely linked to applied fields such as human rights, social justice, environmental laws, and sustainable development. Law is no longer merely a means of regulating behavior; it has transformed into a tool for ensuring justice and achieving a balance between individual freedom and the public interest.

Discussing the philosophy of right in law does not stop at the limits of philosophical theorizing; it opens the door to questioning law itself: Does existing law express the essence of right, or can it be separated from it in cases of injustice and tyranny? Does right precede law as an absolute human value, or does law create and define rights? These questions represent the heart of the problem this research seeks to address.

Accordingly, studying the philosophy of right in law represents an entry point for understanding the dialectical relationship between normative and positive, between justice and power, and between individual freedom and

social order. It also allows for a rereading of the development of legal and philosophical thought throughout the ages, leading up to the present, where the world faces complex challenges that require a re-formulation of rights in light of economic, political, and technological transformations.

The fundamental problem of this study is the dialectical relationship between the philosophy of right and law, and the theoretical and practical problems that arise from this relationship. While law is supposed to embody and protect rights, we find in many practices that law may be separated from the essence of rights and become a tool of domination or discrimination. Here, the central question arises: Is right considered a value prior to law, from which it derives its legitimacy, or does law create rights and determine their content?

Therefore, the study aims to: clarify the philosophical foundations of the concept of right and its relationship to law across different philosophical eras; demonstrate how rights are embodied in the legal system and the limits that law sets for their exercise; analyze the relationship between justice, right, and law, considering justice as a criterion for assessing the legitimacy of law; and highlight contemporary challenges facing the philosophy of right, such as human rights, social justice, and environmental rights.

First: The Philosophical Concept of Right

The philosophy of right is the name that has prevailed in German thought in particular, expressing the general principles of politics, law, and the theoretical and philosophical foundations of the state. It was Kant who used this name as the title of his political philosophy, and it was used for the same purpose by Fichte and Hegel after them. German philosophers were not the first to philosophically consider the general theoretical foundations of politics; they were preceded by English pioneers of the theories of natural law and the social contract: Thomas Hobbes, John Locke, and David Hume¹. However, while the English contributions to establishing political theory were limited to the social contract theory, making natural law an integral part of the original contract upon which the state and law are established, the German contribution was to transform the subject of

¹ Hegel, G. W. F. (2015). *The philosophy of right*. Hackett Publishing

political philosophy into a comprehensive deductive conceptual science². From simple, self-evident first principles about natural, fundamental rights, and about the nature of human society and its foundations, German philosophers derived the legal, political, and legal system upon which the modern state could be founded³. The main difference between the English tradition of social contract theories and the German tradition of the philosophy of right is that the English tradition was based on the liberal vision of individual rights, which must be embodied in any constitution and political system to gain legitimacy from the perspective of these theories⁴. The German tradition, particularly Fichte and Hegel, departed from this liberal, individualistic vision and based law and state on social rights and the concept of the people, with the state as the political expression of the people and their unity and identity.

In any case, philosophically, a right can be defined as the recognized authority or interest of an individual or group, recognized by law and protected by justice. Philosophical schools in this regard are divided into two main trends:

The Natural Law School: This school believes that rights are not created by humans, but rather inherent or innate rights derived from human nature or from divine will. These rights (such as the right to life, liberty, and property) are considered universal and inalienable, predating the existence of positive laws. According to this school, the function of positive law is to recognize and protect these natural rights; otherwise, it is considered unjust⁵.

Legal Positivism: This school considers rights to be the product of positive laws enacted by humans. A right exists only if it is stipulated by law issued by a competent legislative authority. This school disregards the existence of any moral or natural rights outside the framework of law, and believes that

² Alexander, G. S. (2002). Property as a Fundamental Constitutional Right-The German Example. *Cornell L. Rev.*, 88, 733

³ Hegel, G. W. F. (2012). *Hegel: Lectures on Natural Right and Political Science: The First Philosophy of Right*. Oxford University Press

⁴ Campos, A. S. (2019). The idea of the social contract in the history of 'agreementism'. *The European Legacy*, 24(6), 579-596

⁵ Finnis, J. (2011). *Natural law and natural rights*. Oxford University Press.

law must be separated from morality. A right, in this case, is a power granted by the state, not an innate one⁶.

Second: The Historical Development of the Philosophy of Law

In general, the historical development of the philosophy of law is a transition from the search for a metaphysical basis for law (natural or divine), to a rational, humanistic basis (the social contract), and finally to a positivist basis based on legislative reality and governing authority. This intellectual journey continues, with the emergence of new challenges such as universal human rights, social justice, and the philosophy of law in the digital age⁷.

The historical approach to the philosophy of law is an intellectual journey across the ages, reflecting the evolution of human understanding of the basic concepts of justice, law, and authority. This journey began with the first reflections in ancient societies, through the Middle Ages and Renaissance, and reached modern and contemporary theories.

The First Stage: Ancient Greek Philosophy (Natural Law): In ancient Greece, the focus was on the idea of natural law. Philosophers such as Plato and Aristotle believed in the existence of universal principles of justice that could be derived from nature or reason. Plato, in his "Republic," presented a concept of justice based on the harmony between the state and the individual. Here, law is not merely a positive law, but rather a reflection of an ideal, just system. Aristotle considered man to be a political being by nature, and the purpose of the state is to achieve the "virtuous life." For him, law stems from man's nature as a rational being, and positive laws must be consistent with natural law⁸.

The Second Stage: The Middle Ages (Divine Law)

With the advent of Christianity, the philosophy of law was influenced by theology. Law came to be viewed as derived from the divine will. Saint Augustine saw natural law as a reflection of eternal divine law. Human laws are only just if they are consistent with this divine law. Saint Thomas Aquinas developed this concept further, where he distinguished

⁶ Coleman, J. L., & Leiter, B. (2010). Legal positivism. A companion to philosophy of law and legal theory, 228-248.

⁷ Magen, S. (2015). Philosophy of Law. International Encyclopedia of the Social & Behavioral Sciences, 18, 24-30

⁸ d'Entreves, A. P. (2017). Natural law: An introduction to legal philosophy. Routledge

between four types of law: eternal (divine) law, natural law (human perception of eternal law), human (positive) law, and divine law (revealed in the scriptures). He emphasized that positive law must serve the common good and derive its legitimacy from natural law⁹.

The Third Stage: The Renaissance and the Age of Enlightenment (The Social Contract and Individual Rights)

During this period, a radical shift toward humanism and rationalism occurred. Hugo Grotius is considered the founder of modern natural law, arguing that natural law exists even if there is no God. This concept separated law from religion and based it on human reason. Thomas Hobbes, in his book "Leviathan," proposed the idea of a social contract. He argued that humans in the "state of nature" were in constant warfare and that they agreed to surrender part of their freedom to an absolute ruling authority in exchange for security. John Locke offered a different vision of the social contract, asserting that individuals possess inalienable natural rights (life, liberty, and property). The government's mission is to protect these rights, and if it fails, the people have the right to revolt against it. Jean-Jacques Rousseau, in "The Social Contract," spoke of the "general will" as the foundation of legitimacy. Laws must express the will of the people, giving rights and citizenship paramount importance. **Stage Four stage: The Nineteenth Century and Beyond** (Legal Positivism and Contemporary Philosophies)

This era saw the emergence of new schools of thought that questioned the idea of natural law. Legal Positivism: This school, represented by Jeremy Bentham and John Austin, views law as simply a set of positive laws issued by a sovereign authority. There is no necessary connection between law and morality or justice. Law is what it is, not what it ought to be.

Third: The Philosophy of Right and Its Relationship to Justice

Right is considered a central concept in philosophy and law, as it constitutes the framework upon which social and political relations are built. However, the value of right is only achieved through its connection to justice, as it is the ultimate goal sought by every legal or moral system.

⁹ Grant, E. (2010). The (Studies in Philosophy and the History of Philosophy, Volume 52) nature of natural philosophy in the late Middle Ages (Vol. 52). CUA Press

Justice is considered the core of the philosophy of right. Right ultimately aims to achieve justice. However, there is disagreement about the relationship between right and justice: 1) Right as a tool for achieving justice: This philosophy views law and right as means to achieving a higher goal, which is justice. If the law does not achieve justice, it loses its moral legitimacy. 2) Right as an Independent Concept: Some philosophies view right and justice as independent concepts. The existence of a particular right (for example, the right to property) does not necessarily mean that it is always just in all cases, especially when it leads to inequality¹⁰.

Fourth: The Philosophy of Collective and Individual Rights¹¹

The function of rights emerges as a means of achieving the objectives of legislation. Its function in individualism, apparently, is to protect the individual and his freedoms, while its function in socialism is to fulfill the desires of the group, created by their state of social solidarity. Its true function in laws is to harness the energies of individuals and peoples to achieve the objectives of the strongest party in the relationship. The strongest party in individualism is the holders of vast capital. Their governments and laws are dedicated to protecting them, creating a suitable environment for the growth of their wealth and its expansion beyond their countries' territorial boundaries in various ways, serving as the arm of foreign policy and a means of exporting this philosophy. The true function of rights in social law is not far removed from what is mentioned in individualism, except that the strongest party here is the ruling authority. The people are nothing more than a group of individuals linked by specific ties to their state. The manifestation of this connection is nationality, a legal and political bond that connects the individual. Legal philosophy also addresses the balance between individual and collective rights. 1) Individual rights: Focus on the freedoms and rights enjoyed by individuals independently of the group, such as the right to expression and privacy. Western liberalism considers individual rights to be the foundation upon which societies are built. 2) Collective rights: Focus on the rights of groups or communities, such as the right to self-determination for peoples or the rights of minorities. Some thinkers argue that individual rights must

¹⁰ Padoa-Schioppa, A. (2017). A history of law in Europe: from the early middle ages to the twentieth century. Cambridge University Press

¹¹ Chandra, R. (2017). Collective rights vs. Individual rights. International Journal of Multidisciplinary Research and Development, 4(7), 51-55

sometimes be restricted to protect the public interest or the rights of the group. The philosophy behind these rights can be addressed as follows:

1) Individualist Philosophy¹²

The proponents of this philosophy believe that humans possess natural rights derived from their very nature as human beings. Therefore, their existence is necessary for human existence. They can be described as absolute rights or privileges that predate the existence of society and law. The establishment of society requires a plurality of individuals, and the existence of positive law cannot exist without society, as it governs relationships. Relationships require a plurality of parties (the individuals in the relationship), and a plurality of parties means the establishment of society. From this perspective, they are called natural rights. Neither law nor society is their source; rather, they are the foundation of the law. Law is merely the means by which these rights are expressed and protected from attack¹³.

As for the authority that rules society, it cannot create rights, as rights have existed as long as humanity. It cannot abolish rights, as it lacks the authority to do so, on the one hand, and because these rights are natural, they cannot be waived, modified, or relinquished, on the other. Consequently, the role of the authority has been limited to protecting these rights, which is why it is known as the guardian state. If restrictions are sometimes imposed, this is an exception to the rule, due to necessity. Exceptions cannot be expanded, and necessity is measured according to its degree¹⁴.

Among the effects of this approach is the definition by its proponents of right as: the voluntary capacity that authorizes an individual or individuals to perform or refrain from a specific act or acts. The essence of right lies in voluntary power, which alone creates, changes, and terminates rights.

Crusius, as a result of the growth of the bourgeoisie and the individual's demand for the protection of his rights and freedoms, argued that the basis of natural law lies in human nature—or natural law, as he put it—which

¹² Shestack, J. J. (2017). The philosophic foundations of human rights. In *Human rights* (pp. 3-36). Routledge.

¹³ Herbert, G. (2017). *A philosophical history of rights*. Routledge

¹⁴ Ritchie, D. G. (2014). *Natural rights: a criticism of some political and ethical conceptions*. Routledge.

requires human beings to live according to their social instincts in a calm, orderly society. Everything that reason produces in this direction is derived from natural law. From this basis, it is deduced that the principles of this law are one and universal.

To understand the rules of natural law by pure reason, Crusius follows two methods: the deductive method; that is, reason deduces the legitimacy of the rules of natural law from human nature. The second: the inductive method or the method of subsequent judgment, meaning tracing the practices of peoples that can be considered natural, since they clearly express the principle of social instinct, and then identifying through them the rules of natural law.

2) Social Philosophy (The Doctrine of Social Solidarity)¹⁵

This doctrine, in its view of the nature and source of law, proceeds from its belief that law, as a social phenomenon, must be built on a realistic foundation known through observation or experience. This resulted in foundations built on metaphysical ideals, which is what the proponents of the doctrine of natural law believe, as well as what was merely assumption and imagination not supported by reality, which is what the proponents of the individualist philosophy believe. What reality, which is observable and known, demonstrates is that man is a social being who can only live within a group whose members work together to satisfy their needs, and that this solidarity leads to a system according to which the behavior of individuals is regulated. This leads them to the conclusion that social solidarity is the sole and reasonable basis for law as the necessary rule for group life. The rule of social solidarity can be formulated as follows: The individual—Whether ruler or ruled, he is obligated to refrain from anything that violates this solidarity, and he must perform every act that leads to its preservation and development.

This fundamental rule, in both its positive and negative aspects, must be formulated in accordance with the law to be implemented. Consequently, legal legislation, as well as custom, do not create rights, as they are legal positions or social functions created by a state of social solidarity, and their role is limited to revealing them.

¹⁵ Cotterrell, R. (2017). *Law, culture and society: Legal ideas in the mirror of social theory*. Routledge.

Based on the foregoing, the proponents of this philosophy believe that rights originate with the group and to the group, with no individual share in them inherently and independently. The rights enjoyed by individuals are merely social privileges or functions, and their holders are public officials entrusted with using them in a manner that achieves the public good. In other words, they are an authority or power granted by the group to its members to perform the duties required by a state of social solidarity. However, the excessive and exaggerated adoption of this doctrine has led to the subjugation of all the individuals comprising society, because it assumes that authority represents society and its interests. The end result is that the authority rules according to its philosophy and implements it with excessive force. This doctrine has thus become a form of legal positivism, which is generally characterized by two things: One: that law is written, positive law, and therefore, it is the product of a governing human will. The second: that law is an inextricable logical system; meaning, according to them, solutions can only be derived from legal rules¹⁶.

As for moral values, whether political or social, they are outside the scope of the legal system. Therefore, they accepted the complete separation of law and morality, and of law and politics. Consequently, law is what it is, not what it should be. There is no room to evaluate law by the value of justice. For them, the assumption of a law outside the state is not law, but rather an ideal or moral opinion or idea that examines the existence of law. The rights and duties that individuals have or owe are determined by the law established by the authority in society, and nothing else.

Fifth: The Relationship Between the Philosophy of Right and Law¹⁷

The philosophy of right is a fundamental branch of legal philosophy. It aims to study the normative foundations upon which the concept of "right" is based and how it is translated into binding rules within the framework of law. Right represents the moral values that humans strive to achieve, while law is the institutional instrument that regulates and protects those rights. Hence, the interactive relationship between the two becomes apparent, with law being considered a practical embodiment of the philosophy of right.

¹⁶ Kelsen, H. (2017). General theory of law and state. Routledge

¹⁷ d'Entrevés, A. P. (2017). Natural law: An introduction to legal philosophy. Routledge.

A. Right as a Source of Law: Right is viewed as the foundation upon which law is built. Laws exist primarily to guarantee individual and collective rights, whether natural or acquired. Without prior recognition of the existence of "rights," law becomes mere commands whose sole purpose is regulation. Accordingly, the philosophy of right grants law its legitimacy and moral validity¹⁸.

B. Law as a Guarantee of Rights: Conversely, rights cannot be realized or protected without the existence of a law that protects them. The law defines the content of rights and sets the limits of their exercise so that they do not conflict with the rights of others or the public interest. Therefore, the law plays the role of guarantor and mediator between the individual and society, achieving a balance between individual freedom and collective order¹⁹.

C- The philosophical dimension in formulating the law: The philosophy of law not only defines rights, but also sets forth the philosophical principles that the legislator must consider when enacting laws. The most prominent of these principles are justice, equality, freedom, and human dignity. Therefore, we find that modern laws in areas such as human rights, the environment, and social justice reflect an evolution in the philosophy of law, which in turn influences legislation²⁰.

The relationship between the philosophy of law and law is dialectical, not linear. Sometimes rights transcend the law, as in the case of unjust laws that do not reflect justice. Here, the role of the philosophy of law emerges as a critical criterion for evaluating and reforming the law. Conversely, law may have preceded the regulation of rights that were not clearly stated, reshaping the philosophical understanding of rights.

Conclusion

The philosophy of right is a fundamental branch of legal philosophy. It aims to study the normative foundations upon which the concept of "right" is based and how it is translated into binding rules within the framework of law. Right represents the moral values that humans strive to achieve, while law is the institutional instrument that regulates and protects those rights.

¹⁸ Kelsen, H. (2017). General theory of law and state. Routledge

¹⁹ Dicey, A. V. (2017). Lectures on the relation between law and public opinion in England during the nineteenth century. Routledge

²⁰ Winch, P. (2015). The idea of a social science and its relation to philosophy. Routledge

Hence, the interactive relationship between the two becomes apparent, with law being considered a practical embodiment of the philosophy of right.

Right is viewed as the foundation upon which law is built. Laws exist to guarantee individual and collective rights, whether natural or acquired. Without prior recognition of the existence of "rights," law becomes merely commands whose sole purpose is regulation. Accordingly, the philosophy of right grants law its legitimacy and moral validity.

Conversely, rights cannot be achieved or safeguarded without the existence of a law that protects them. The law defines the content of rights and sets the limits to their exercise so that they do not conflict with the rights of others or the public interest. Therefore, the law plays the role of guarantor and mediator between the individual and society, achieving a balance between individual freedom and collective order. The philosophy of law not only defines rights, but also sets forth the philosophical principles that legislators must consider when enacting laws. Among the most prominent of these principles are justice, equality, freedom, and human dignity. Therefore, we find that modern laws in areas such as human rights, the environment, and social justice reflect an evolution in the philosophy of law, which in turn influences legislation.

The relationship between the philosophy of law and law is dialectical, not linear. Sometimes, rights transcend law, as in cases of unjust laws that do not reflect justice. Here, the role of the philosophy of law emerges as a critical standard for evaluating and reforming the law. Conversely, law may have previously regulated rights that were not clearly stated, reshaping the philosophical understanding of rights.

It can be said that the philosophy of law and law constitute two sides of the same coin; the former represents the value-based and intellectual framework, while the latter embodies that framework in the form of binding, enforceable rules. Therefore, the relationship between them is one of complementarity and interaction, where the right gives the law its legitimacy, while the law gives the right its actual force.

The philosophy of law represents a bridge between legal theory and social and political reality. It is not limited to defining what is "legal," but rather seeks to answer a fundamental question: What should a right be? Analysis

reveals that a right is linked to freedom and justice, and that understanding it requires a balance between naturalistic and positive theories. In light of contemporary changes, the philosophy of law remains a vital tool for developing laws to meet human needs and achieve sustainability and justice in society.

Furthermore, the scope of rights in laws is limited to private rights, with no public or shared rights recognized. This is the position of individualism. If they had advocated public rights (societal rights), this would have undermined their philosophy, which holds that this right is not, for them, as ancient as private rights. Rather, its existence is linked to the existence of society, and law is essential to the existence of organized societies. Thus, rights are secondary to the existence of society and law, and therefore their source is either society or law. This contradicts their philosophy. Since public rights are not known to them, neither are shared rights, as they are born of the recognition of the existence of both public and private rights. As for social law, there is no private right, but rather there is a public right, and private rights are costs and duties imposed on the individual for the benefit of all.

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