

The Comparative Investigation at the Education of Philosophy of Right from Aristotle to Rawls

Mohammadreza Shahidipak*

Department of Humanity, Islamic Azad University Central Tehran Branch, Central Tehran, Iran

Abstract

Education of right is most important topic of law education. any scholar in length of history tried to educated the philosophy of right to Contemporary societies. In the first time Aristotle discussed and Taught about natural law but the presence of rights are both moral and legal in very school of law in the east and west of the world's board sense, in everyday language most people have little doubt what a right is? and a right usually understood and Taught to mean more than a standard moral and there is twin issues of the right – utility conflict and the assertion or denial of absolute of basic rights remain central. in historical point the popular terminology of right had been debated and learned from Greek and Romans to medieval Europe special in the period between the French and American revaluation and the second world war. there is in medieval philosophers separated between legal right of animal and legal right of singular man and legal right of state as in law treatise of Ali (713) and Averroes (1198) in commentary on republic of Plato talked in any kind of right and discussed singular right of women from political and sociological and philosophical view. In modern period, the right learned and classified by European philosophers of early seventeen century as Montesquieu and lock and in eighteen century Kant (1804) reexamined Aristotle thought about natural right and deduced metaphysic of law. These thought in natural right and social contract criticized by Bentham (1832) who was rejected right and offered the theory of utility. Philosophy of law in twentieth century has been largely uniformed by question in metaphysics and epistemology and ontology of law and scholars struggled for resolve between right and utility in global area, special in the background of international human right. The question is what is a right in approach of east and west philosophy? Which right's thesis resolve the conflicts between right or utility and morality or legality and absolutely or relative of right from Plato and Aristotle to Dworkin and Rawls (2002) who struggled to answer by political liberalism theory. Paper investigated philosophical and religious thoughts of any scholars in the style of comparative law that devoted both to describing the content and style of local, national and religious and legal system and to exploring the similarities and differences among them.

Keywords

Aristotle, Right, Rawls, Legal, Averroes, Utility, Kant, Reason

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* Corresponding author
E-mail address: Reza2018mreza@gmail.com

1. Introduction; Family the Word of Right, and Firm Saying

1.1. Word of Right in Texts from Ancient to Medieval

Origin of this word in ancient epoch derivate from The Indo-European root is also the source of Avestan *rāšta* 'straight' ancient Persia and from their divine book. In the ancient text of England the origin of this word is: *riht* (Longman, 2018) and means "go straight, guide, rightful, legitimate, *rēctus*, true, be just *recht*, *rehtaz*, *ὀρεκτός*, *rēctus* as: and in collection of Latin language medieval used.

1.2. Medieval Form of the Word of Right

There is in the most important of Islamic texts of medieval used right four hundred. Used in Quran word of right about two hundred and fifty and about fifty in treaties of Ali. Quran built special term for right and used just once in Quran. Right introduced by this term as origin of all aspect of right used in any application and using. This term is; firm saying that strongly fixed on position, firm saying used once in surah xiv Abraham of Quran that is international surah and part of Quran. Allah confirms those who believe by firm saying in the life of world. All application of Right, Return to firm saying and to the Correctness of Using this term in following words; because, firm saying is spirit of these words.

1.3. Continuous Application the Word of Right

Right in texts of ancient to modern used as; True / correct-suitable / side / problems / morality / emphasis / health / socially / exactly / well / immediately / allowed / politics / have a right / correct behavior / rightful / Right a wrong / rightfully / rightist / right thinking / right wing / right wards / religious right / human right / divine right / go straight. Firm saying is just equal *rāšta* that used in ancient Iranian texts and just equal the express of Kant about right when introduced right as straight line and it is just losing reality and truth of Rawls who is the leader of theorizing about right in twenty one century.

2. Historical Introduction , Method and Materials

2.1. Rawls and Historical Demonstration and Approach to Right

Rawls the American ideologue and theoretician who is in the top of theory of right in framework of political liberalism used in Rawls's book special in right of peoples. Rawls used

the word historical demonstration as proof for justification of Rawls's opinions. Rawls's book nothing just historiography of rights and law that studied relationship between states and law and emotion and desire and religion and right of citizen and public reason and economic for finding manners for accomplishment of justice. History in deed is evaluation of states and nations upon changing of law beside of right and emotion. Therefore the history is just the evaluation of law. Because understanding of contemporary political theories as political liberalism of Rawls and any theory in law possible just by study of history of right and law. Reality of The theories in law are historical. Paper investigated upon this method history of law and right and states and their struggles about rights from ancient period to twenty-one century.

2.1.1. Conflict Between Law, Rights, Emotion, and States from Ancient to Medieval

The Code of Hammurabi, One of the first written laws in the world, (1728 BC – 1686BC) with the Persian and Semitic and law of Moses background. The code of Hammurabi contained 282 laws and civil rights and law of economic under the rule of Hammurabi and successors of Hammurabi. It was rediscovered there in 1901 in Iran (Westbrook, 1393) and is now in the Louvre Museum in Paris. The study in significant laws in Hammurabi's code shows the conflict between religion, authority, states, civil right of citizen, god's rights. These conflict moved by Cyrus II (576 – 530 BC) and he wrote first human right and human rights charter was developed by Cyrus 2,500 years ago. The Persian domination and kingdom in the Iranian plateau started by an extension of the Achaemenid dynasty, who expanded their earlier domination possibly from the 9th century BC. He closed law from authority of states to human right and he moved societies in different tradition and civilization and built any shifting cities with new culture. This is the struggles of Cyrus for earning the authority by setting human right for the freeing of slaves, humanitarian equality and costly reparations. He made and he wrote Cyrus Cylinder upon and by using religious law of the Avestan term *dāta* and established Neo-Babylonian Empire. As opinions of any scholars, the objective for the emergence of Cyrus Cylinder rests on Cyrus's political purposes.

2.1.2. Right in Ancient Roman

There is Continuing conflict between Emotion, states, law and right in history of ancient Roman by emergence of Roman law, from (449 BC), to the *Corpus Juris Civilis* (AD 529) ordered by Eastern Roman emperor Justinian I. Roman law writing and writing any time upon local desire and by monarchy and upon secular right of people. And there is any comparative law that combined from roman law and Mosa

law and Berber law as what write in 390A.D for Theodosius II, great law of Ireland, Hermogenianus, codex arcerianus lex salica, new Visigoth law and burgundionum.

2.2. Law Between Local Feudalism, Church

2.2.1. Roman Heritage and Inner of Court in Medieval

One of the most important history of law and right and authority of states occurred in the Early and high of Middle Ages, this phenomenon finally culminated to separating between divine law and public law. The special medieval event is the emergence of law of church in Europe and development the range of conflict. State and authority, Politic, law, culture, economic, emotion, ruler and citizen and their desire in this period are nothing just functions of church and the pope wanted, Law of Serfdom and status of peasants under feudalism. Rights of serfdom were most important aspect of conflict. therefore wrote any law for earning of the benefit of feudalism and determined The serf's duties and law of feudalism, lasted in Europe until the mid-19th century. The roman law yet in central and wrote any summarization and abridgement and composing and arrangement about roman law and produced over hundreds texts in medieval. One of most important texts is the texts for composing between law of church and roman law. Some scholars defend from Roman law in front of divine law of church and struggled to revival the Roman law. And Law of Serfdom and feudalism continued in local area in Sicily, Lombardy, Barcelona, king of Sicily Roger II (1154) wrote and promulgated the great local law regulating all Sicilian affairs. It invested the king and bureaucracy of king with absolute powers. Gratian wrote book in canonical in first time in 1139 and the research of Gratian was the beginning of separation canonical and religious law from legal law. Glanville great judge of England wrote in first time the public law out of Roman law that it forbidden to enter in Oxford University. Therefore established independent school of England law and wrote the scholar law of England (Sarton, 1975) and formed in first time inner of court.

2.2.2. Nation and Local Replace Truth and Right in the Late Middle Ages

The late of middle age begin whit Averroes and Aquinas that believed in unique of theological and philosophical and political issue in natural right but any scholars as Francesco wrote canonic law in 1265 and determined different between canonic and public law. and Fredric ii Hohenstaufen king of Sicily wrote and sent Sicilian question to king of Mediterranean and philosophers of that territories and scientists as IBN- Sabin that named philosophy of truth. These question show the question about truth and right is yet central. By writing Magna Carta,

and its world importance in 1215 in England by order of king john. And by writing local law of Germany, Schwabenspiegel, in 1230 and after prohibition of teaching roman law in Paris and London in 1219, replaced nationality and local interests to right and truth and separated theology from law and emergence new class of scholars as jurists and lawyers. They started the social changes in Europe. But in Asia, principle of local Feudalism determined by writing any local law as collection of new law in japan in 1232 and in Iran in ilkhanyd period in 1226. And in Iran wrote any scholar canonical law. Therefore separated way of east from west in law but conflict between law, state, right, citizen right reminded. And there are in every part of world wrote any system and collection of law those necessity for conserve the authority of its states.

2.3. Averroes, Plato Approach to Law and Real Utopia

2.3.1. Metaphysic of Law by Plato

Law is basic element of political thought of Plato; the most important of Averroes's books, is in Laws. That wrote laws as result of trips to any country in Europe, Asia and Egypt in Africa. That observed administrations of any governments and met and counseled to any kings and rulers. After these Averroes believed in absolute roots of law and believed in influence of metaphysic in law. That programed in laws for credible cities and states (Capleston, 1983). Plato in spite of disappointment of existence of ideal in the earth, believe in perfect city in heavens and said; " in heaven, there is laid up a pattern of it, methinks, which that who desires behold, and beholding, may set own house in order. But whether such a one exists, or over will exist in fact, is no matter; for will live after the manner of that city, having nothing to do whit any other." (Plato, 1968, p 430), Plato believe root of human' behavior are reason, emotion and, excitements, but citizens must follow laws with transcendental basic for firmness and strength of cities. Plato, introduced laws for conservation of cities by who is guard and keep laws.

2.3.2. Averroes and Law and Reason

Averroes same as Plato wrote in the west of Islamic world in Spain very most scientific works; book of Islamic laws upon new method and upon priority of reason to law and religious jurisprudence and in this book Averroes answer this question; What the law presents? Averroes struggled in Islamic laws to reasoned justification of religion jurisprudence in framework of Shiite rationality. Averroes explains relation between law, emotion and reason (Averroes, 1969). Averroes as Plato introduced laws as cities' preservation and as spirit of cities. Therefore there is practical philosophy of Plato and same Averroes in their books about laws.

2.4. Special Paradigm of Natural Law Theory and God's Right

2.4.1. Common Aspect of Natural Law

Natural law theory has a long and distinguished history, encompassing many and valid theories and theorists – though there are probably no point of belief or methodology common to all of them. In legal theory, most of the approaches dubbed natural law can be placed into one of two broad groups. Which I call traditional and modern natural law theory (Paterson, Bix, 1996). But indeed natural law is philosophical and historical Subsistent reality that it cannot divide. There is historical dialog upon opinion of Plato, between Plato, Aristotle, Averroes and Aquinas about the issue of Natural law theory and God's right, the result of these discussion produced by Averroes who analyzed the republic of Plato in Spain in medieval epoch framework of Aristotle and upon Islamic knowledge. He studied the common and unlike opinion of Aristotle and Plato. The common aspect between Plato (Plato, 1968) and Aristotle (Aristotle, 2009) which was used by Aristotelian philosophers both in Islamic east and west and Christian west was the natural law theory. Human and society are natural phenomenon. Averroes like Aristotle believed in the collectivity of the wisdom and the independent identity of the human's will in ruling affair. Rejecting Plato's theory of idea and also considered the politics and ruling as humanitarian facts and introduced the rational discipline as the human perfection. Archbishop of Paris Aquinas (1224-1274), having a modified interpretation of Averroes and Avicenna on political philosophy of Aristotle, says: city is a natural foundation and the God's right which is of grace doesn't violate human's right which is of human reason alone (Brehier, 1931).

2.4.2. Using Terms of Ancient Quarrel in Area Philosophy of Law by Plato

There is in republic of Plato, used the word, right, state, soul law, desire, ruler, temperance, citizen, justice and their relation between them. Why because temperance is unlike courage and wisdom, each of which resides in part only, the one making the state wise and the other valiant; no so temperance, which extend to the whole, and runs through all the notes of the scale and produce a harmony of the weaker and the stronger and the middle class whether you suppose them to stronger or weaker in wisdom or power or number of wealth. Or anything else. Most truly then may deem temperance to be the agreement of the naturally superior and inferior, as to the right to rule of either, both in states and individuals. And so it said, may consider three out of the four virtues to have been discovered in state. The last of those qualities which make a state virtuous must be justice if it

only knew what that was (Plato 170, 171, book IV). There is in republic of Plato and politic of Aristotle anything about relationship between states, laws, emotions, citizenship law, rights, justice that reexamined by any scholars and philosophy is nothing but footnotes on the Plato's Republic which is a suitable start for social political philosophy (Palmer, 2011).

2.5. Firm Text That Immune from Changing and Tampering with Authority

2.5.1. Text Without Changing

As what showed by history of law that the main identity of law produced by states is changing and alteration and tampering with authority. There is not any law in history with longevity and useful life. Quran occupied central role as the most important firm source of law in emergence in medieval in final period of vast historical challenge between all system of law in east and west of the world. Emergence of Quran is historical phenomenon of medieval appeared in front of the phenomenon of alteration of law. Quran have firm systematic relation between states and maturity and soul of Man and citizen and desire for established justice in societies. Philosophy of Quran is just philosophy of law. Therefore the Quran also guarantees the authoritativeness of the legal system in epistemological terms and upon this historical phenomenon of alteration of the all law in the world, appeared theory of abrogation.

2.5.2. Orientalists and Study in Law, Right in Islamic Societies

There is balance Relation between citizen and state and emotion and law upon historical report confirmed and research by any orientalist in modern period as Watt, Kaytani, Cahen, showed reality utopia by establish new society in 622.A.D in Arabian peninsula by Quran and showed relation between morality and law and emphasized to absolutely of ethic. While it is true that the Quran is primarily a book of religion and moral prescriptions there is no doubt that it encompasses pieces of legislation strictly defined. In propounding message of prophet wished to break away from pre-Islamic Arabian value and institutions, but only insofar as need to establish, once and for all, the foundation of the new religion. Pragmatically, could not have done away with all the social practices and institutions that had prevailed prior and up to time of darkness before Islam. Medieval Muslim jurists and modern scholars seem to agree that Quran contains five hundred verses with explicitly legal content. It is to be stressed that of all traditional source and legal element, the Quran alone survives largely intact in modern thinking with respect to the source of law (Wael Hallaq, 2003, v 3, p, 150, 170). Established religious pluralism society of Arabian peninsula combined from Muslim, Jews

and Christian under ruling of Mohammad in Medina is one of the most obvious phenomenon studied by any scholars as a Kaytani, Watt, Wellhausen (Watt, 1999). In this period emergence in 622.A.D. first written law in 47 articles between citizens of Medina.

2.5.3. The Progress Science of Law and Right in Medieval, Averroes and Description of Tyranny

After death of Mohammad turn the circulation of states from democracy to tyranny, this historical phenomenon studied by Spain philosopher and great judge, Averroes in last of medieval, hated despotism and considered Omayyad dynasty, the freedom denier, as the root of tyranny and called for the intellects of Maghreb am Iberian peninsula to get away from dialecticism, and argument, superstitions, imitations, and heresy and this phenomenon studied by watt in twenty century. The background of Alteration from democracy to tyranny was, canonical evaluation, because Omayyad dynasty replace, local law to firm law of Quran and Omayyad state by authority, kept Islamic societies at distance of firm saying of Quran and life style of Mohammad in this situation. But there is in history of right, determined treaties of Ali in rights in basic right and priority rights of people of Islamic and any religious societies and divided natural right to nineteen articles. Parts of these rights correspond with the division of Hobbes and Hofeld division in rights.

2.5.4. Identity of Treaties of Ali in Rights of People and It's Correspondent and Function

The function of treaties of Ali is individual health, liberty for all citizens and it is immunity. These treaties are progress of science law in the first period of Islamic civilization and these wrote the world basic principle of natural and political law and right upon approach to soul and essence of human in rights of body and rights of soul. Most original principal of political thoughts for conservation cities from disorder is nonintervention that mentioned in it. Undertaking to agreement is the One principle of treaties of Ali and it is the origin of justice and there is undertaking to agreement same in opinion of Hobbes who say, third law of nature is justice and it is exists by agreement (Hobbes, 1380). Fourth article of natural law in division of Hobbes is thanksgiving that mentioned in treaties of Ali. Division of Ali is most complete division determined basic principle of right to over fifty rights for all times and all places of the world and it is necessity for all. Ali say in first of treaties; these are fifty rights that surrounded and it cannot divided under any circumstances, upon this description, justice is equal right (J = R) (Ali, 2003).

2.5.5. The System and Charter of Right

Ali 711.A.D. divided basic principle of right to over fifty rights as, rights of GOD, body, environment, animal, minaret, this is index of right in perfect opinion of Ali in glance; - Rights of GOD, The Right of soul, the Right of tongue, the Right of hearing, the Right of sight, the Right of legs, the Right of hand, the Right of stomach, the Right of private part, the Right, the Right of prayer, the Right of fasting, the Right of pilgrimage, the Right of charity, the Right of the offering, the Right of the possessor of authority, the Right of trainer through knowledge, the Right of the trainer through ownership, the Right of subjects through authority, the right of subjects through knowledge, the Right of the wife, the Right of subject through in ownership by law, the Right of mother, the Right of father, the Right of the child, the Right of the brother, the Right of subject who by allegiance and succession devotion, the Right of subject whom have favored, The Right of who treats kindly, The Right of the caller to prayer, The Right of the ritual prayer leader, The Right of sitting companion, The Right of the neighbour, The Right of the friend, The Right of partner, The Right of property, The Right of the creditor, The Right of the associate, The Right of the adversary The Right of the claiming adversary, the Right of who seeks advice, The Right of who seeks counsel, The Right of the older, The Right of the younger one, The Right of who begs, The Right of The Right of people of creed, The Right of those minaret. These rights are general.

2.6. Renaissance and Conflict and Relationship Between Law and Theology

There is in history necessity relation between law and theology but this relationship emergence in Renaissance as anthropological and historical political phenomenon. All of 14 and 15 century occurred conflict between law and theology by writing special texts in each aspect and separated line of law from theology clearly and produced any special works in civil law and public law and wrote dictionary of canonical term beside civil and public law by Rosciate and its thoughts is background of French revaluation. In Germany wrote any local law, in local language and accent. As property law, city law, Johann von Buch in mid of 14 century wrote two new interpretation on local law.

Although reflection on the relationship between law and theology has long history but Conflict between theology and law still continue and it find in constitutional theory. Edward Gaffney (1973) uses a theological anthropology to explore deficiencies in the supreme court's discussion of whether the fetus is a person (Paterson, Chase, 1996)

2.7. Rights, Alteration, Changing and Subsistent from Grotius to Rawls (2002)

2.7.1. Preparing the Field of American and France Revaluation

Grotius 1645, claimed the foundation of natural law and rights is fixed without any changing as mathematical principle has absolute value but entrance this stable and Subsistent for authority of state. by contract law Hobbes say about meaning law that changed always therefore and divided the world basic principle of natural law and right to nineteen article that granted just by extra absolute power of God but in action, believed in difference between natural law and natural right and said as Grotius about importance of contract law. Spinoza 1677 believed in difference between real world and ideal world and in action believed in contract law but as theory determined the principle of ethic for explanation relation between emotion, law, right and justice. Montesquieu 1759 discussed about local law and relativity of ethic in the world and struggled to determined relation between law, right, justice and state and in action believed in contract law. Rousseau and Hume emphasized to importance of emotion and Hume denied existence of any Subsistent. Lock 1704 studied connection between natural station and civil station. Eighteen century is period of skepticism in knowledge about right that caused in separation between natural right and secular law wrote by scientists and produced any treaties in human rights and finally this movement leading to saving of Europe of mercantilism. And provided the background of American and France revaluation 1789.

2.7.2. Right in Nineteen Century

Right from Kant to Hegel in nineteen century. there is struggle for closing the right and law by creation two subsistent for rights. Kant and Hegel closed to Plato and Aristotle philosophy and reexamined their political philosophy. Kant belt the idea of duties as fixed idea for law and Hegel determined big and stable idea of state and subsistent to provide power for creation the idea of absolute state. And struggled to established fixed and stable basic for law and states. Kant increased the authority of law that Crospondence with rights as duties and Hegel replaced state in law.

2.7.3. Benefit Principle, Alteration of Law, and Return to Moral by Hofeld and Doworkin

Austin 1790, and Bentham 1859 denied and rejected existence of any natural right and law and established theory about relation between law, state, rights and economic emotion and desire of states upon Benefit Principle. and

separated between is and have to and finally Hart, said there is no relation between justice and law. Therefore alteration became the basic principle of law. IN contrary of this theory W. N. Hofeld 1878 -1918 US Law professor the most influential analyze of the concept of a right in legal and moral philosophy and rejected positive law and resolved legal or moral recognition of determined relation between law and right on Hofeld 's view right could be divided to:

1. a right is liberty
2. a right is a right strictly speaking or claims right.
3. a right is power
4. a right is an immunity

3. Result: Necessity of New Education and Training Method of Right

The education of right is the core of education and training in the world. The last theory for new education of right, presented to get right and the establishment of justice by it, is political liberalism, From Theoretical Research, paradigm of Political liberalism has been held accountable as a model for determining the right for some areas but intellectual research on political liberalism in many countries has not even begun because there is no philosophical structure and context for it in these areas. And the debate on the right still remains a debate in the field of Scholastic philosophy. There is little development about this issue in the field of analytic philosophy. Now, there is need for the right to develop in the field of analytic philosophy with a new teaching method. And In the field of practical, war is still under development to get right And the establishment of justice by it because there is no Comprehensive agreement in Metaphysic of right, And twelve years after Rawls' theory of justice is considered as a useless logic Mystery and philosophical problem (Lonergan, 2014, 46,45)

4. Discussion: The Remaining Immortal Discussion Space

As noted in the paper, there is big discussion about right in the field of humanity science and still for discussion in this problem that Why the question of what is right? remained. There are in post modernism thoughts, A new space for this conversation has started as opinion of Doworkin who say law is an activity driven by assertion, claims in law are assertive in nature (Patterson, 1996, 380), Doworkin as Hofeld, criticized and rejected positivism thoughts about rights and law and returned to necessity of basic principles of law and

said right is moral claim with special method and logic. And as a new approach of Rawls, who In twenty-one century reexamined Plato and Aristotle and return to new medieval thought and discussed in ethical basic of justice and said about historical possibility of real utopia and believed established it in Islamic societies. Therefore there is the question of what is right? Remained central from ancient period to twenty-one century and continued these historical conflicts about law, rights, states and justice. Still, young and old researchers are interested in describing the course of denial of right in history And re-examine and educated the philosophy of right (Al-Ahmad, 2017) And Many studies have focused on the inherent change in the nature of law, justice and right especially after the establishment of the bourgeoisie (AL- Shavi, 2015, 536) And any scholar review the history of the world based on the lack of justice and Deny the right in it (Harari, 2014) and dozens of researchers have acknowledged the succession of money to right for determination of justice in their paradigm, money measures everything instead of right (Lonergan, 2014).

5. Conclution: Analytic Relation Between Right and Justice

As the historical reality and fact of right in the world history showed, thoughts do not reach to any truth about justice, on this basis, the determination of justice is a very complicated reality, and it is function of several active variables elements that are rapidly in changing. Therefore there are any different paradigm for determination and measurement of justice and several paradigms on the expression of justice have reached different formulas in determining justice. The present research has presented one of these formulas in a historical perspective on the truth and justice. All investigation at law and right from Aristotle to Rawls is ability for systemization justice in societies because justice is resultant of emotion, right, state and law that formulated as: $J=R\frac{LS}{E}$; and Relation between parts of justices is function of Subsistent factor of right (R) that is saying firm and that is central. It is practical formulating of justice in Very sophisticated contemporary societies. But only in the field of absolute and fundamental theoretical research as you seen, there is a theory that, determined justice by rejecting and removing variables elements of relation between justice and truth and just upon the natural relation between right and justice, and in this hypothesis, justice is equal to the right ($J=R$).

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