SOME ASPECTS OF LEGAL AND POLITICAL PHILOSOPHY (CASE STUDY PHILOSOPHY OF ISLAMIC LAW)

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Abstract

Debates associated with politics are very closely connected with the role that laws play in articulating public values. We note that a wide-ranging study of political institutions without attention to the law is incorrect. This article describes the importance of connections between legal and political philosophy for the academic understanding of social reality. Political andLegal Philosophy analyze the situations of having abstract political ideas and how to move these ideas to concrete policy proposals or actions. We have a particular interest in the history of political and legal thought, and how they are connected with contemporary issues. In this paper we illustrate the examples from history of Islamic Law and social development of Islamic legal schools. The Islamic law, as product of Islam and as case study of this paper is derived from the Quran, Hadith, and sunnah, history of Islam, and elements of political movements outside of Islam.

Key words: *Political Philosophy, Ethics, Law, Politics, Islamic Law, Society, State, Institutions, Ideals, Constitution, Legal Philosophy.*

I. Introduction

In this paper, we deal with ideas related to legal and political philosophy, the relation between two disciplines, and explanations of the law as a part of politics. Working out to answer to questions of social reality, that is primary duty and the nature of political philosophy. This paper deals with concepts of organizing of state institutional structures to achieve social egalitarian ideals. Based on those political and legal ideals are very closely related to political decisions, there are questions: which laws should be ratified what kind of decisions are made andwhat decisions mastered, what constitutional changes should be predicted, and what general structures for law reform should be adopted? With special focus on historical and social development of Islamic Law, as the fundamental Islamic idea of religion explicitly, its law of Muslims. The Quran is the central source of Islamic Law, which contains verses related to Allah,beliefs and how a particular Muslim should live in this worldly life.

II. The concept of Legal and Political Philosophy

Political philosophy relates to the questions of what is the best form of government? Why should individuals obey the law? Once the first group of questions are answered there will be

more questions. Consideration of this questions is field of Political Philosophy (Murray, 2010). Among other questions the most important questions are: What ought to be a person's relationship to society? To answer the question the subject need to answer sub questions, for example: The application of ethical concepts to the social sphere. To deal with the diversity of forms of government. To open questions related with the existence of the people, and there is always religion present. In this relations, political philosophy also provides a standard by which we analyze and judge existing institutions and their relationships. Political philosophy, as very important branch of philosophy that is concerned, at the most abstract level, with the concepts and arguments involved in political opinion and massive political communications.

If we deeply entered in the meaning of the term political the notion itself is one of the major problems of political philosophy. Generally, however, like definition we can say the political is related and may characterize like that all those practices and institutions that are concerned with government. But we must explain there that political philosophy can be distinguished and it is different from political science. Political science predominantly deals with existing states of affairs, Political science seeks to analyze the actual social affairs – for example: constitutional regulations and problems, election and voting behavior, political parties and interest groups, division of power and the balance of power, the effect of judicial review, and so forth. The obligations of Political philosophy are to generate visions of the good social life, and there is a question what is good social life. To answer this question, we need to explain that the subject of political philosophy is broad and connects with various branches and sub-disciplines of philosophy including philosophy of law and of economics. (Daniel M. Hausman, 2008)

Ideas related with political philosophy in same time legal philosophy explanations always are related with the law as a part of politics. Law and politics as social phenomena are two emanations of the same entity, social entity regarding which their separate existence is only a consequence of a human dualistic or pluralistic perception of the world and society.

In this context with politics, it is necessary to distinguish three fundamental aspects: The institutional aspect, the normative aspect, and the process-related aspect.

The institutional aspect is expressed by the term polity a specific form of political organization and entails the function and operation of several and different regulated state and non-governmental institutions like political parties, social movements, public media, the legislature, and the governmental institutions and agencies.

The normative dimension is expressed by the term policy, which can be explained as a set of ideas or plans that is used as a basis for making decisions, in politics. Policy involves the creation of normative ideas or ideals that define basic societal values and objectives geared towards a practical realization of such.

Finally, the process-related aspect is expressed by the term politics, Politics are the actions or activities concerned with achieving and using power in a country or society, which is expressed in the formation of the political will and model, through the implementation of the social power and authority and built up through conflict and consensus. (Demiri 2020)

In context of our topic, we can see that from an institutional perspective, the law by definition is the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision. The law is expressed primarily through two factors: the establishment of specific state bodies legitimized by means of their specific professional legal

structure, and functioning (e.g., the courts and the state prosecutor's office), and non-state institutions where the attorney ship belongs.

The laws play important role in articulating public values, and a significant role inprocess of constitutional interpretation. During this action's laws articulate and enforce public values. Analyzing and studying of political institutions, without attention to law are incorrect. Based on our elaborations we can conclude that connections between legal and political philosophy is very important for academic understanding of social reality. States making the norms or principles that establish and justify societies based on that determine the rights and responsibilities of citizens and other members in relation to its society, the members of society creating relation to each other and to society as a whole, and of a society in relation to other societies as international relations. In our time we need to answer question how the history of political and legal thought, is connected with contemporary issues. Is there repetitions of historical events, what we can learn from history. What is solution to this important question in political philosophy: how to move from abstract political ideals and ambitions to concrete policy proposals or concrete political actions. To realize one political ideal its needed strong links with think tanks and policymakers, it's very important to organize institutional structures to achieve best social egalitarian ideals. The concepts of political and legal ideals are very closerelated with political decisions and political interest based on those questions: which laws shouldbe ratified in legislature, what kind of decisions are made in the executive power and what decisions are made in government? There is a very important aspect in field of constitutional law, it's process of constitutional changes, where should be predicted a lot of changes, and there are again questions about what kind of changes are more appropriate. Or in political system structure what kind of law reform should be adopted? There are unlimited questions and differentanswers but we need to decide for best solutions for our society.

III. Case study philosophy of Islamic Law and politics

Islam as religion, began in Arabian Peninsula and was revealed to humanity by the Prophet Muhammad. Those who follow Islam are called Muslims. Muslims believe that there is only one God. Amongst the world religions, Islam is considered to be the youngest, but also one of the largest universal religion.

After death of Prophet Muhammad, and rapid expansion of the Islamic realm, the Muslim polity became socially and administratively more dynamic and complex. Muslims came into contact with the laws and institutions of the lands that were conquered. To manage with them they appointed judges, or qadis, to the various provinces and districts, an organized judiciary legal system. The newly appointed qadis and judges were responsible making functional legal system, and creating admirative and fiscal law. To have well organize empire they pragmatically adopted elements and institutions of Roman-Byzantine and Persian-Sasanian law into Islamic legal practice in new territories (Hallaq 2005)

The Classic heritage preserved at Constantinople strongly influenced neighboring Islamic civilization. (Bloom 1958) In fact, the Political and Legal aspects of Islam are derived from the Quran, hadith literature, and sunnah (the sayings and living habits of the Islamic prophet Muhammad), history of Islam, and elements of political activities and experiences outside of Islam. Traditional political concepts in Islam include leadership by elected or selected successors to Muhammad known as Caliphs (Imamate for Shia). In Islam is very important of

following Islamic law, rulers are obliged to seek Shura or consultation for different important issues; and the duty to criticize unjust rulers.

IV. Islamic Law definition

In etymological terms, Islamic Law refers to a water source, which is the source to which people who want to drink come, so they drink from it and fill their buckets. In Islamic Law refers to Islam, which Allah has chosen for his believers to bring them from the depths of darkness into the light. Allah has enlightened to them orders and bans, halaal and haraam. Whoever follows the Sharia Law of Allah, will triumph. Whoever goes against the Islamic Law (laws) of Allah has exposed himself to divine punishment.

Based on history of Islam, the followers have been divided into two groups having different views regarding certain aspects of Islam. Thus, the schools of Islamic law can be roughly classified into two categories: Sunni Schools and Shia Schools. Ahmed Akgündüz, (2010)

V. Sources of Sharia Law

5.1 The Quran

Quran is holy book of Muslims the direct words of Allah, as revealed to and transmitted by the Prophet Muhammad. All sources of Islamic law must be in essential agreement with the Quran, the most fundamental source of Islamic knowledge. The Quran is the definitive authority on matters of Islamic law and practice.

5.2 The Sunnah

The Sunnah refers to the sayings and practices of the Prophet Muhammad and His family (Ahl Bayt), many of which have been recorded in the volumes of Hadith literature.

The resources include many things that he said, did, or agreed to—mostly based on his life and practice. During his lifetime, the Prophet's family and companions observed him and shared with others exactly what they had seen in his words and behaviors—in other words, how he performed ablutions, how he prayed, and how he performed many other acts of worship.

5.3 Ijma' (Consensus)

In situations when Muslims have not been able to find a specific legal ruling in the Quran or Sunnah, the Ijmāʿ, (Arabic: "consensus") in Islamic law, the universal and infallible agreement of Muslim community as a whole or Muslim scholars in particular. the agreement of the mujtahids (jurists) from muslim community upon a rule of Islamic law."

5.4 Qiyas (Analogy)

In cases when something needs a legal ruling but has not ever been clearly addressed in the three main sources, there is Analogy or qiyas is the fourth source of Sharia (Islamic Law). In case of the lack of direct text, from the Quran or Hadith, on any contemporary issue, making judgment based on analogy, judges may use the analogy, reasoning, and legal precedent todecide new case law. This is often the case when a general principle can be applied to new

situations. Shariah law aims to protect five basic human interests: religion, life, family, property, and intellect. These basic interests are universally recognized among all other nations even though nations vary in their approach in doing so.

VI. The legal schools in Islam

One of the most important features of the Islamic law and indeed of Islam as a whole is the pervasive role of the doctrinal legal schools. In Sunni Islam, these schools were four: the Hanafi, Maliki, Shafi and Hanbali, named after the four master jurists who are founders of legal school. The Arabic word for the legal school is Madheb, a term that has several meanings, all of which are interconnected. Generally, the word means that which is followed and, more specifically, the opinion or idea that one chooses to adopt; hence, a particular opinion of a jurist.

6.1 Hanafi

Imam Abu Hanifa was born to a non-Arab father, was raised in Kufa, and died in Baghdad. This school of thought prevailed during the time of the Abbasid Empire when a studentof Imam Abu Hanifa, Abu Yusuf al-Qadi became the head of the judiciary department and the highest judge, and thus he spread this madhhab (school of thought), in particular, during the caliphates of al-Mahdi, al-Hadi, and al-Rashid.

6.2 Shafi

Imam Shafi´i was born in Hijaz and his school of thought emerged in Egypt. At the time of the Fatimid Dynasty, the Egyptians were mainly followers of Ahlul Bayt, and the teachings of Ahlul Bayt were being taught in al-Azhar University.

6.3 Maliki

The Maliki school of law was named after the traditionalist and lawyer Malik ibn Anas (died 795) of Medina (in today's Saudi Arabia).

6.4 Hanbali

The Hanbali School of Law takes its name from Ahmad ibn Hanbal (died 854), a major theologian of the ninth century. He was a fierce opponent of the Muʿtazila, a school of religious thought that flourished under the Abbasids.

6.5 Jafari

The Ja‘fari school of thought was headed by Imam Ja‘far ibn Muhammad al-Sadiq who lived from 83H to 148H. He was born in and died in the holy city of Madina, and he is the sixth Imam of the twelve designated imams of the school of Ahlul Bayt.

Although the fiqh (Islamic Jurisprudence) was developed by the Prophet Muhammad and his successors (i.e., the imams), the fiqh, as taught by the Shi‘a, did not have the opportunity to be presented to the masses of people because of the political difficulties that the Ahlul Bayt suffered under the rulers for many centuries

CONCLUSION

Law and Politics, as a fundamental element of most developed human societies, has been an object of philosophical reflection since the beginning of Western civilization. Now days its concerns continued to be in central academic discussions. Whether new paradigms in legal and political philosophy will emerge, creating a break from the past, and giving solutions on questions how law, and political institutions will evolve in the future.

Analyzing Islamic law as case study we conclude that the taking a part of Islamic law andthe Islamic legal institutions during the nineteenth and early twentieth centuries directly meant the devastation of whatever rule of law there was in that traditional Islamic society. The dynamics that administrated the relationship between the madhhabic jurists and political power disappeared. The colonial experiences of the Muslim world, and rise of modern state as dictatorships in Muslim society is simply tragedy, in which modernity, westernization, did violence and destruction on established traditional Islamic cultures.

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