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Important Aspects of Law and State Concepts in the Philosophy of Law

Abstract

One of the themes which are studied at the Western Philosophy is law and state. Law and state concepts have always been investigated properly to the requirements of that period, socio-political issues between them have been primary investigation source for all philosophers, politicians, and lawyers. Law and state which Western thinkers always based on, do not comprehend only practical and political issues, law and state in their views are distinctive measures that empower spiritual, moral and ethical values in society, and have a significant influence on the community.

In this present research, alongside showing the relevant and distinctive features of the concepts of law and state examined in the philosophy of law, as well as commitment and analyzed other important issues by reliable sources.

Keywords: *philosophers, legal philosophers, law, state, ethics, society*

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Hüquq fəlsəfəsində hüquq və dövlət anlayışlarının mühüm aspektləri

Xülasə

Qərb fəlsəfəsində təhlil olunan mövzulardan biri də hüquq və dövlətdir. Hüquq və dövlət bütün zamanlarda həmin zamanın tələblərinə uyğun olaraq öyrənilmiş və bunlar arasında olan ictimai-siyasi məsələlər həm filosofların, siyasətçilərin, həm də hüquqşünasların əsas tədqiq mənbəyi olmuşdur. Qərb mütəfəkkirlərinin əsaslandığı hüquq və dövlət təkcə praktiki və siyasi məsələləri əhatə etmir, onların nəzərində hüquq və dövlət varlıq aləmində ruhi, mənəvi və əxlaqi dəyərləri aşılaman və ictimaiyyət arasında mühüm təsirə malik olan başlıca meyardır.

Hazırkı tədqiqatda hüququn fəlsəfəsində təhlil olunan hüquq və dövlət məfhumlarının uyğun və fərqli cəhətləri göstərilməklə yanaşı, həmçinin bunların arasında olan bağlılıq və digər mühüm məsələlər səhih mənbələrə əsasən təhlil olunmuşdur.

Açar sözlər: *filosoflar, hüquqşünas filosoflar, hüquq, dövlət, əxlaq, ictimaiyyət*

Introduction

In the philosophy of law, philosopher and legal philosophers have introduced compatible and various aspects while referring relation between law and state. Philosophers believe that while analyzing law and state concepts, initially state-related issues should be emphasized and their practical aspects ought to be investigated not only practically, but also theoretically.

In general, philosophers and lawyers analyzing the law from the point of view of philosophy, have shown that law and state are both needs in terms of theory and practice. However, during the study plenty of questions may arise: Law is essentialist, but the state is a practical concept, and how

it can be that state is considered the source of law? Another question is that people acquired rights since the creation of human being, and it means that law is not in existence recently, it has always been, although the state is a political organization created as a result of socio-political and historical events, and how it might happen that there are connections between them? During the investigation, lots of questions can emerge, and it is possible to increase the numbers of them, but we consider it more reasonable to justify the issue by satisfying with these two questions.

Research

Analyzed issues

When law and state concepts are investigated, first of all, state-related issues should be paid attention, and their practical sides have to be explained. After deep research of practical problems, then philosophical issues can be analyzed. Taking into account that, law and state concepts take a great deal in the law of philosophy, we will mention their main features and afterward, we will analyze the philosophical aspects of those two concepts. In terms of the law, the state is analyzed in two cases: general and specific. While referring specific meaning of state, leaders of organizations existing in the country come to mind, and their job is not limited by just governing those organizations, because they also execute organization related affairs. Overall, management of those organizations is under the control of ministers, and all orders are defined by ministers and entrusted to local organizations.

However, a general definition of the state is government; by saying general definition of state it is meant legislative bodies including all organizations. And here national and international relations need to be remembered, for example, admission of the Republic of Azerbaijan to membership in the United Nations Organization (UNO), agreements concluded between Azerbaijan and UN and other organizations can be examples. The development of the state should focus on these two issues (general and specific) and their functions.

It is known that in every country obligation are divided. Legislative, Justice and Executive bodies apply to general part of the state, even though they are separate state bodies. The most important agencies for legislation are the parliament and its representatives. Judicial issues are entrusted to courts, executive and administrative matters are defined by ministers. But these concepts about the state refer to the special meaning of state. Thus, by saying the *legislative government* reliable the state organization is meant.

Moreover, it is said that principles of law reflect the will of the state, and the main purpose here is public organizations which have right to establish legal regulations. They cannot be confused with the specific meaning of state, because they indicate a general definition of the state. It is clear that state as a concept is very simple, and everyone can understand and feel it in his social life. The State develops discipline, protects the interests of the country, punishes those who commit unlawfulness, claims privileges, prepares laws, and carries out general service, manages and protects national resources.

When we analyze the state-related principles, we witness that concepts of the power and government are quite obvious, as if the state has extraordinary power over all matters. Therefore, many thinkers have called the state "*power*", and others have linked this power with the law by saying that it is governed according to legal principles. More exactly, some philosophers and legal philosophers have called the state as a great force and others claimed that power of the state is governed by legal rules (Cairns, 1966, pp. 259-261).

Hegel writes at his book called *Philosophy of Law* by analyzing state concept: general laws arise from organizations affiliated with the state, and the man in matters related to conscientious objection must follow the law and public requirements and live as a member of the state. The state is the ultimate goal of any person's needs and whatever happens in the state is based on a particular reality (Hegel, 1967, pp. 155-156). Hegel wants to say that the existence of the state and the law is determined by the extent of the society, and the existence of the state is, not by its name, but the principal function where any decision of the state must be lawful and anything beyond law cannot be achieved.

Legal status of the state

While analyzing state and its principles, the status of state should be taken into account. The state has legal status, in other words, specific and independent authorities regardless of its specific or general definition. Because society makes decisions under the control of the state, implement the duties defined by state and is considered to be a part of the state. On the other hand, it is known that although all these above-said requirements are met, the state does not have full legal status, because norms are required to ensure the legal status of the state. Any decisions made by society have norms no matter they were made under the control of the state, therefore, the organizational issues of the state are compared to the law, and then the jurisdiction applies to the person. While discussing the legal status of the state, social principles should not be overlooked; the state has legal status and authority on the basis of public opinion. Every human as an individual personality has their own unique will. They decide independently and their personality is based on a free will to fulfill any task. Furthermore, a person has rights and various obligations, in addition to these commitments his subordination should be noted. Human being tries to follow norms defined for him, and for sure he abides the law.

However, if we compare legal entity with a physical entity, we will identify that authorities of the legal entity are based on particular restrictions. And here while referring legal entity we mean state, to rephrase it, entity who governs state does not have legal authorities, because legal authority of state is limited to compare with physical entity. The reason is that society gives authority to state, if there is not any society, how the state can discourse about authority, law and government? Thus, while studying concept of state and its principles first of all, public issues should be focused on. When it comes to social issues, here are intended relations of masses. There is specific demand among these relations and that demand which is a legal-political concept by means of it people create a certain institution gathering around each other, and this institution is called *state* that reflects society.

If we investigate the issue more profoundly, we can say that the state does not reflect just society, it also involves a great part of world nations about different states. Even if the state's public commitment is weak, this is still a concrete and solid organization. Because the state, in turn, carries out public relations more efficiently than any other relationships, stabilizes them and aligns. All relations of society is under the control of the state, and each person should be aware of care and control of the state.

There are lots of various interpretations about state and if we apply to philosophers, we will identify that Kant interprets state in an ordinary form. In his opinion, state consists of human community and society is governed on legal regulations (Kant, 1956, p. 65-67; Wolfgang, 1947, p. 67-68). If we pay attention, we will see that it is very simple definition of state, so that, state does not define just human community and legal regulations. Such an interpretation might be relevant for a city or body of the state. Maybe such a definition can be envisaged for a city and organization of the country. From this interpretation of Kant we come to such a conclusion that the main thing he thinks about is the public rights of citizen, because citizenship is a kind of rank given to man in society, and it is his subordination to state, in other words, government is judge (dominant) and the citizen is subject to all its laws and principles (Kant, 1956, pp. 66-67; Patterson, 1953, pp. 389). Kant does not superior state as ultimate power to compare with society, on the contrary, he pays more attention to relation of citizen to state and declare that subordination of citizen to state should not be interpreted as a restriction of his rights, might be it is just for development of dominant power and strength of citizenship duties of citizen. As a result of this power and strength legal state is established and developed. Relations of society with the government are examples of the dots that make up the circle. The circle is made of dots, and if one of these dots is missing there will be a space which leads to illegality. If we compare Hegel's thoughts about state we will know that his approach is quite different than Kant's. He approached concept of state from another aspect. According to him, the state has moral reasoning and self-awareness on the principles of morality. Hegel identifies the state as an organization based on principles of morality; by this, state protects its sustainable development by referring moral and legal principles. It is possible to see the

principles, rules, values of ethics and law on the state; In Hegel's words, "the state is practical reality of the ethical ideas", (Friedrich, 1969, pp. 131-134) so that, the ethical norms of the state has been available at the society and these norms should reflect to any person. In addition to, he identifies state as a justice and consider that law and justice can not be interpreted separately. If we study it in detail, we can see that ethical norms that he analyze absolutely belong to state and society. These ethical norms are orders for person to abide by the law and consider to state holy, and live honestly and be devoted in the society. By analysing citizen's position and place of detention in the society Hegel notify that every person is considered a child of society because he is closely devoted to culture and rules of the country that lives in, more precisely he is the child of contemporary life, and he has realistic privileges that he owns, and these privileges ensure his personality based on certain logic. Therefore, in order to comply with the rules of ethics in the organization of the state, attention must be paid to the promotion and understanding of the intellectual and spiritually healthy people, and this is a great privilege granted to a member of state (Dias, 1976, pp. 66-67).

If we compare the ideas of Kant and Hegel, we will identify that unlike Kant, Hegel does not call the state as an organization governed according to public and legal rules, he believes that state is a large and private organization that solves the economic, political, legal, moral, welfare and other issues of society. Here, moral matters refer to the values commonly associated with national traditions, art, political agencies, common beliefs and relationships among different nations, as well as values that have a great importance to the society.

While speaking about the legal status of the state, we should not lose sight of social principles. Because the state has a legal status on that social basis. But it should be taken into account that the state not only reflects public issues, but also it combines a whole community. If the public bonds of the state are weak, it is still considered a concrete and solid institution as the state, jointly and steadily, fulfills public relations more than any other relationships, and directs them in the right direction. All public relations are under the influence of the state, and a person should feel himself only under the patronage and control of the state.

In general, the connection between the state and law, and law and the state are not only social development, but also the recognition and observance of human ethical values. The state longs for the individual and points out the ways of his progress; law explores the individual, and morality forms the individual. This is the main condition that these three categories are related to social development. Because the state is the source of law (of course, according to the theory of positive law), that is, it means that the right assumes power over the state and depends on the power in the origin of rights. The state longs for the individual and points out the ways of his progress; law explores the individual, and morality forms the individual. This is the main condition that these three categories are related to social development. Because the state is the source of law (of course, according to the theory of positive law), that is, it means that the right assumes power over the state and depends on the power in the origin of rights. But this does not mean that in the absence of the state, law cannot exist, law is already a concept of essence, that is, rights do not arise later, but with the birth of a man.

Therefore, the state cannot exist without the right, and if it does, it is not complete. The main purpose of creating legal norms is to ensure that the political force leads the society and to maintain a link between the public and the authorities through these rules.

Relation of the concepts of state and law

Definition of the concept of state is very broad, and any philosopher and lawyer can interpret the state based on their qualification. If we have a look at the opinions of lawyers on this issue, we will observe that they explain state according to legal issues. For example, Italian legal philosopher Dell Vico thinks that state imposes obligations to legal organizations under its authorities, as well as exercises the right of people as the origin of legal structures (Giorgio, 2001, p. 143).

It is clear that state introduces obligations for legal institutions and requires their fulfillment; that is to say state is considered a pillar of society. But here a question arises: which power that has given this supreme power to state and which regulations are those that have given ultimate power

to the state? When we go further investigation of the issue, it will be clear for us that social being and country are not enough for the creation of the state, because existence of law is also an essential factor. Here while the referring nation, plenty of people are meant that establish the state, in other words, community is a prime need for the establishment of the state. But it does not mean that state is a simple and ordinary institution, might be it is a new value at all times (identity), because nation and country depend on nature covering material issues, namely as assumption those are related with actions rather than reality. A man and his place are unstable depending on time and circumstances, and his forever existence there is not possible; however, for the formation of the state, stability is prerequisite. And here the concept of stability is not used to refer to social stability and tranquility, the primary purpose here is the stability of the country. For instance, a group of people or a mass of people living in shelters cannot establish state; might be they shape the embrion of state, but the formation of the real state is impossible. Because, the majority of people is not the main condition for establishing a state, the main point is here to maintain a fixed and stable country. Moreover, determination and existence of state and legal relations are prerequisites. Thus, the *state has the power over only a fixed and stable country*, and that is the law that shapes and protects all these issues. Laws are based on morality and give public recognition. The opinions of famous english lawyer Dennis Lloyd also worth hearing. According to him, the law can not be analyzed as law, any action which is correct, justified, and legally binding should be reflected both as legal laws and moral laws (Dennis, 1966, p. 78).

Conclusion

After all these analyzed issues, we may come to a conclusion that if we take it into consideration the idea of the "existence of the law is equally necessary as the formation of nation and the country in the creation of the state" asks a question: why is law so important in the existence of the state? Law and its requirements always exist regardless of time and place, because these requirements are not dependent on a person's will, its exist in nature. If fixed and stable nation and country is necessary for the creation of the state, however the existence of law does not come from necessity, it is closely related with nature of people shaping the core of the state, and those people have been divided into different nations and live in various countries. If the establishment of the state depends on nations and certain country, its existence also subordinates on fixed and ultimate principles of law not just a temporary person and the place where they exist. Even if there are not human beings or other creatures or their place of detention, soul always exist. Law is a manifestation of soul that shapes and reflects the laws in the material world in different forms-by the features of freethinking, justice, fairness, honesty, ethics, tradition.

Therefore, it would be more precise if called state as a legal organization of society. Every nation develops on the basis of legal relations, even if there are not any social relations between them, they will continue their life. But, it is a reality that each nation endeavors to establish a legal organization (state) that meets the demands of the environment that its members live in. The human being is a natural entity, and he wants to accept and comprehend everything around him naturally. This desire emerging from his nature confront him with others. In that case, these wishes can be further expanded and lead to create a larger community. The will and demands of these masses stimulate the creation of a certain institution and it is the same legal organization that today we call it state.

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