

The Role of Religion in Development of State and Law

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Abstract. In the course of history countries had different approaches as to what the role of religion and law in the regulation of social relationships should be. As a matter of course, the becoming of state and law was directly dependent upon the authority of a particular religion. The connection between the religion and the law was very deep and complex. In this article, the authors attempted to structure the role of religion in the becoming of law and state.

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Introduction

Earlier in history religion played a tremendous role in the development of mankind. It helped people find the meaning of their lives, explained a great many of unfathomable natural processes, though sometimes the explanation was not scientifically correct. When the law was somewhat flimsy, and there was no law enforcement whatsoever, the fear of judgement of God helped to sustain a stable and calm society, which in turn contributed to its proper development. A. Heard has once stated that “human rights are almost a form of religion in today’s world” [1], and it is pointless to argue.

Many scientists use the “existential approach” [2; p.113] toward the interrelation of morality and law. This approach observes the law as an evolutionary development of human religious activity. According to this approach, law itself takes its roots in religious practices [3; p.13]. Notwithstanding, legal system is separated and isolated from religion.

There is a chain reaction in the society: based on religious practices, moral principles emerge, after that, they evolve into traditions and customs, which might become legal in course of time. Though, this is not a mandatory scheme; religious principles can grow straight into being legal. This can happen when a particular group of people intends to impose their religious beliefs on others, and in order to do so, they make them legal. It is a common practice in big multinational cosmopolitan countries, in which the powers-that-be want to consolidate the people and the country by means of a unified religion. Such process can be either forced or peaceful. For instance, in a caliphate, instead of forcing the process of islamization, the authorities used the economic leverage, thus increasing tax rates for non-Muslims. Another example is the latest announcement in the UK, according to which, testamentary succession

between Muslim relatives residing in the UK will be conducted in accordance with Sharia law [4]. It is impossible to disagree with Joseph Schacht, a renowned scientist, who maintained that “Islamic law is a good example of statutory law: it has been built and developed by independent experts” [5; p.13]. Also, it would be appropriate to quote a famous utterance: “To a Muslim’s mind, everything that is good, agrees with Allah, and what is bad, is against Him” [6; p.161].

In legal framing, law-makers have always tried to bring something from the religion they practice. It was believed that this way law would have the same sacral value as that of religious principles. Almost up till the end of early modern period, courts, partially or fully, were religious as opposed to secular. Higher clergy, for example, Brahmins in India and archbishops in Rus’, were also influential public officials. Heads of states, be it a Wang in China, Ancient Egyptian Pharaoh or a Russian Tsar, - all of them were considered the Lord’s Anointed. For example, the first caliph incumbent after the death of Prophet Muhammed, Abu Bakr said, “Obey me as long as I obey Allah and His Prophet. When I disobey Him and His Prophet, do not obey me” [7; p.11]. People considered their rights a God-given virtue, thus not only was their violation taken as a crime against the state, but also against God himself.

Religion played a significant role during first state formations. Religious principles, along with moral principles and law, make up the basics of social behavior. At different points of social development law and religion had varied degrees of correlation. There were times when religious principles bore significance equal to the law. Even in today’s world, in some countries of Middle East and North Africa not only is religion equal to the law, - it is law [8; p.117]. Countries like such are called

theocratic. Although religion in them is separated from the state, it still has a direct impact on the society. Religious principles can coincide with the law in a number of aspects. For example, the major world religions disapprove of murder and plunder.

Religion had a direct impact on the establishment of the first nation states. Consolidation of principedom and establishment of a firm vertical of power are commonly related to the spreading of orthodoxy and turning it into a state religion. The influence of church goes far beyond religion. It becomes the biggest land-owner in the country, it holds the judicial power. Also, the system of education was under its control for a long time.

Russian philosopher I. A. Ilyin suggested that “church and state are mutually exclusive as to their constitution, spirit, dignity, purpose and means of enforcement. Any state that's trying to acquire the power and dignity of church is sacrilegious, sinful and stale. Any church that's trying to acquire the might and power of the state - loses its dignity and betrays its intended purpose. Church must not use force - not to impose its beliefs, not to execute heretics or villains, not even for war... In this meaning, church is “apolitical”, the objectives of politics are not its objectives; the ways of politics are not its ways, the rank of politics is not its rank”.

Over the course of years the connection between religion and state has manifested itself in different shapes. In theocratic monarchies, all the power is concentrated in the hands of religious authorities. In democratic countries, state and religion are normally separated and are independent from one another. Also, in such countries citizens are free to choose the religion they want to practice.

The separation of church and state does not exclude the possibility of cooperation. However, in this case, law regulates the activity of religious formations. Even so, most democratic countries maintain the principles of freedom of conscience and religious toleration. For example, despite the fact that the vast majority of Russian citizens practice Christianity, any other religion (even if it has only several thousand adepts) is appointed to the same rights as those of the orthodox church. Even now in our secular country church and state continue to cooperate. Religious communities are able to obtain legal identity. Some religious celebrations are of state significance.

Countries in which law is above religion are called secular. On February 2, 1918 Russia became one, when the Decree on “Separation of Church from State and School” came into force and orthodoxy lost its status of a state religion. Everything that indicated religious affiliations was severed from all official documents. Teaching religion at state, public and

private schools was prohibited. Nowadays, in the 14th article of the Constitution of Russian Federation it is still maintained that “no religion can be made state-wide or obligatory. Religious formations are separated from the state”.

The analysis of foreign countries indicated that, along with Russia, in most countries law and religion have separate fields of influence. However, in some countries religion has a great regulative importance. In this regard, a particular religion has an official status. For instance, in p.1 a.3 of the Constitution of Greece it is alleged that the prevailing religion in Greece is that of the Eastern Orthodox Church of Christ [9]. In the principality of Liechtenstein [10; p.646-652.], Roman Catholic Church has an official status. In Islamic countries (Algeria, Iran, UAE, Saudi Arabia, Syria, Turkey and other) religion is not separated from the state and plays a major role in solving social and political issues of different sorts. It is acknowledged that enshrined in Quran religious principles are rightful and truthful, therefore law cannot alienate from them. The central religious texts of Islam (that is, Quran and Sunnah) are also the main source of Muslim law. Law in general and law enforcement are based on religious dogmas.

In a number of countries, particular religions, though not legally acknowledged as prevailing, are in fact so. For example, in Israel, the official and accepted religion is Judaism. Even so, historical-cultural value of the principles of Judaism is connected with an attempt to preserve the way of life and solve the issues with ethnical identity. It is acknowledged that Judaism in Israel contributes to the preservation of identity of Jewish people, state and law [11].

Undoubtedly, it would be appropriate to mention that in today's world religious authorities have great influence on people's minds. For example, in 2008 the society was shocked at the news that Pope Benedict XV is a holder of the document that testifies to him being an organ donor [12; p. 265-267]. This became an excellent boost for the institute of donorship not only in Europe, but all over the world.

In the modern world religion is thought of as something personal, something everyone decides for himself and no one can influence this decision in any possible way. Law, in turn, is taken as a complex system that provides proper distribution in the society of rights and responsibilities. Carolyn Evans in the annotation to her scientific work states that freedom of conscience is one of the central rights, recognized in international agreements on human rights [13; p.2]. However, this question has always been and will continue to be a reason for heated debates.

To crown it all, religion has played a crucial role in the development of state and law. Law helps us structure social life and provide safety, both physically and materially. In turn, religion is responsible for its spiritual health. Indeed, a utopia is impossible to attain, but, judging by the conducted research, there are ways to determine the balance between law and religion towards which to aspire.

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