

Restoring philosophy of law to its rightful place

By George Saad

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Philosophy of law does not seem to offer bread and butter to the lawyer, let alone to the law student. Still, the Lebanese Association for the Philosophy of Law (LAPL) was founded four years ago to draw the Lebanese jurists' attention to a neglected discipline. It has been campaigning for the last year, with the support of the United States Agency for International Development, to include the course in the mainstream of legal education. LAPL believes it necessary for Lebanese lawyers to be at the forefront of the discipline as it gains credence the world over in its humanizing calling for the law.

We read law as a human construct that does not consider the legal text as divinely ordained, and see philosophy as the privileged route to a better understanding of law as discipline.

Legal theory is also key for the solid establishment of democratic institutions, social justice and the rule of law, connecting society at large with law from the vantage point of people's needs.

In its founding manifesto, LAPL declared its determination to introduce philosophy of law, by a decree in the Education Ministry, into the new curriculum of the Lebanese University, the matrix of legal studies in the country. This need is growing with the increased importance of the field in the best Western law schools, especially in the US, Germany, Britain and France.

As soon as legal professionals, – law professors, judges, lawyers – enlarge their field away from their daily work, and delve further in the understanding of law, the conversation turns immediately to the concept of justice, equality, the role of courts and prisons, or the definition of crime.

Consciously or unconsciously, jurists enter the world of the philosophy, even the metaphysics of law. Philosophy is the ultimate reference, and the highest point of reflection on law, and one should not be surprised to see it in the latest debate in Lebanon over the formation of the government, its consensual or majoritarian form, Taif and the new constitutional order, the principle of presidential elections under the much debased Article 49 of the Constitution requesting orderly change at the helm. And yet the Lebanese legal apprentice does not study the discipline in any of the law schools in the country, and remains prisoner of a superficial understanding of legal texts.

LAPL seeks to fill the gap by allowing the law student to combine knowledge of black letter law and legal theory, and to make him closer to the citizen, stripping the discipline from its traditional ivory tower and connecting it with the needs of people in the legal ordering of society. By raising philosophical questions, he gets also

attuned to the strong reaction triggered by the development of market economy, liberalism and technology, leading to the importance of non-market values and the return of tradition. Even natural law seems to be regaining strength in the light of this reaction.

LAPL sees its role as bringing attention to the best of word legal philosophers, ranging from Juergen Habermas and modern American legal theory with Hart and Dworkin on empirical and sociological jurisprudence, to Holmes' insistence that the law is essentially based on case-law and practice, and not on logic, as well as American Critical Legal Studies and the Marxist approach to law as the protector of privileged classes at the expense of the poor.

However, LAPL also gives special attention to the local legacy, notably Near Eastern religious legal traditions which have been marginalized in the domination of Western curriculum on legal education the world over. The best known books on legal philosophy in the West ignore Islamic and Eastern Christian law, and their important contribution to hermeneutics and exegesis, for instance the categories developed in Islamic legal theory known as legal principles, "usul al-fiqh."

So a special effort was exerted to bring together the Western and Eastern philosophy of law traditions, resulting in a seminar and publication focusing on the French philosopher Michel Troper and the works of the late Najaf jurist Muhammad Baqer al-Sadr, author of important books of usul. LAPL is also concerned by the theory behind court decisions, in Lebanon in particular.

Lebanese judges increasingly issue decisions with a philosophical tenor, interpreting legal texts in the public interest and stressing the importance of basic individual and community rights, and led by enlightened magistrates like John Qazzi, Khaled Hamud, Ralph Riachi and Fawzi Khamis, in the civil jurisdiction system; while high administrative magistrates like Shawkat Ma'karun and the head of the Conseil d'Etat, Chucri Sader, rule with a strong philosophical undertone that adopted children have a right to proper documentation despite silent or adverse legislation.

This trend builds on several basic rights decisions in the Conseil d'Etat. In the case "Elias Ghosn" in 2001, the administrative judge forced open a recourse to the dismissed civil servant on the basis of a ruling of the Lebanese Constitutional Council, despite its being barred by legislation. A year earlier, in the decision 'Markaz al-buhuth al-zira'iyya,' the same court had confirmed the precedence of international treaties over subsequent domestic legislation. And in the case "Muhammad Obeid" (2002) it held that a decision putting a civil servant "at the disposal" of the executive authority illegal, because such measure was in effect hiding a severe disciplinary action.

It is in light of these momentous comparative and national developments that LAPL has been arguing for the inclusion of a full course on philosophy of law in the curriculum of law schools. Determined progress has been made, but there is still much to accomplish in a central, albeit forgotten, aspect of our legal education.

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