NATURAL LAW THEORY AND ISLAMIC LAW IN TERMS OF PHILOSOPHY OF LAW

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ABSTRACT

Although there may be some differences throughout the history, the Natural Law Theory has remained its certain most important principles up until our ages. The importance and relevance of this theory for the philosophy of law are mainly due to Hugo Grotius, a Dutch legisl who was the champion of the Laws of the States and advocated the Natural Law Theory. As both natural law theory and Islamic law have a metaphysical base, it seems that they have a common literature. The relation of natural law theory and morality and the relation of Islamic law and morality are one of the important areas that should be compared. Even if it is in different eras and different tones, it is seen that moral values have an important role in general in doctrines relying on natural law idea. Moreover, hence moral values of natural law theory are in the central position, it was seen for a long time as morality and natural law theory are equal. We think that, in the theoretical and practical sense, what kinds of resemblances and distinctions do these conceptual similarities between the two should be inquired. In this study, the purpose is not to justify the basic principles of Islamic law by natural law theory but to make an objective comparison. Methodologically, in this study, the comparison is made concerning principles of natural law theory, not the principles of Islamic law.

STRUCTURED ABSTRACT

The Natural Law Theory, which is compared here with Islamic Law, is not a theory which appeared in some historical periods and then disappeared into the depths of history. On the contrary, the belief about this theory has come up until our contemporary era with different attitudes. As a consequence, it must be acknowledged that it has a dynamical side. When came to the 20th century, there was an increasing interest in ethics, and as a result of this, impersonal values and ethics

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systems were given much importance that these two important factors were the reasons why the Natural Law Theory remained its significance.

The idea of natural law and the doctrine of natural law are slightly different. According to defenders of natural law theory, while the doctrine of nature law is changing, as the idea of natural law is “essential” and “essence, it does not change. Because of this reason, any criticism of the doctrine of natural law does not mean refusal of the idea of natural law.

In natural law theory, the ultimate purpose of the law is to realize the justice. However, the concept of justice does not have an explicit meaning in this theory. Even if it seems like coinciding with Islam’s discourse of justice, ideally, normatively and the most important, positively, there are significant differences. The reason is that, in the natural law theory, justice stays as a metaphysical value and it never positively has an application area. Yet, in Islam, there are concrete dogmas to determine the frame of the concept of justice as religion and law. Besides, these norms transferred into life as a positive law by the Prophet.

The source of the closeness between Islamic law and natural is that in both law systems the idea of justice has a transcendental dimension. In Islamic law, divine will exists as normative arrangements and changes to the positivity within the life codes of the prophet. However, in natural law theory, the idea of justice always protects its transcendence and it is never claimed that it applied as positive law. This situation causes the idea of justice to be in an undefined and ambiguous frame.

The idea of natural law and the doctrine of natural law are slightly different. According to defenders of natural law theory, while the doctrine of nature law is changing, as the idea of natural law is “essential” and “essence, it does not change. Because of this reason, any criticism of the doctrine of natural law does not mean refusal of the idea of natural law. This distinction reminds us that, different doctrines of law which shaped depending on Islamic law thought should not be identified with Islam or Islamic law. As it is known, during history, different legitimate schools of law emerged from Islamic thought. Views of these law schools had an opportunity to be applied as positive law by the authority of the state. However, even if the views and judicial opinions of these schools of law are applied as positive law, it is not possible to accept these as Islamic law itself. As it is stated that the idea of natural law and the doctrines of natural law depending on this idea should be distinguished, Islamic law and the doctrines of Islamic law originating from this thought should be distinguished.

There are moral and legal principles governing human life of the religion of Islam which is divine origin. In the historical process, different doctrines have been occurred depending on these principles. These doctrines should not understand completely as the Islamic law itself. Even, one of these doctrines applied by the authority of the state as positive law, the resulting applications are can not be defined as either religion nor as being law completely Islam itself. The fact that these are comments should not be ignored.
Islam as a religion both source of law and morality. The being of nested the areas of law and morality, the relationship between law and morality be transformed to a topic of hot debate. One of behavior prohibited by law, to be morally evil and sin in the context of religious difference brought together in the differentiation of the results. The supporters of the nature law, particularly including justice, although they advocate many common values, it is thought-provoking that they remain completely disinterested to the Islamic law.

As a result, Islamic law and natural law will not lose anything of value even though it is not applied as positive law.

**Keywords:** Natural law, Islamic law, Philosophy of law, Morality, Value.

Introduction
The Natural Law Theory, which is compared here with Islamic Law, is not a theory which appeared in some historical periods and then disappeared into the depths of history. On the contrary, the belief about this theory has come up until our contemporary era with different attitudes. As a consequence, it must be acknowledged that it has a dynamical side. When came to the 20th century, there was an increasing interest in ethics, and as a result of this, impersonal values and ethics systems
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I. The Historical Development of Natural Law

Although there may be some differences throughout the history, the Natural Law Theory has remained its certain most important principles up until our ages. The importance and relevance of this theory for the philosophy of law are mainly due to Hugo Grotius, a Dutch legist who was the champion of the Laws of the States and advocated the Natural Law Theory. Our aim of why in this paper here we are dealing with the historical background of the Natural Law Theory is to see the similarities and differences with Islamic Law and to evaluate these by their historical era.

A. Natural Law in Ancient Times

From the antiquity to our present day, although in varying appearances, the idea of there is a natural law beyond and above positive law has been dominant. The Natural Law in antiquity is perceived in a pantheistic worldview and depends upon the difference of status between nature and human being. Ancient Greeks thought that there is a universal impersonal regularity in the cosmos and named it as the law of nature. The Cosmos (Universe) is the Divine Order. The human being is responsible for adapting both his individual and social life by that order. Consequently, natural law in antiquity is derived from this eternal and objective order with which the human mind is always related. (Çağıl 1956: 240-241).

In Greek-Latin civilizations, natural law has an important place in the philosophy of law. According to the supporters of the natural law, the law is not an arbitrary invention of humankind even though it may differ in time and spaces. If law had been distinctive feature of the legists, arbitrariness would have been equal to the natural law. History shows us that justice is not something that can be reduced to arbitrary law, but it may inspire canon, so canons ought to be in agreement with the idea of justice in such a way that it evokes the feeling of justice in humans. This feeling demonstrates the existence of law above canons. The law which is superior to all the other arbitrary laws is the natural law. The reason why it is called as the natural law is that its existence is not due to the arbitrary wills of people, but it is inherent in the nature of everything. (Yörük 1952: 53).

In Rome, in the field of philosophy of law, the main figure, who was the representative of Stoicism, is Cicero. His book called as Laws deals with the issues of justice and principles of natural law. According to him, the real, genuine canon is the divine intellect’s comments about differentiating good from evil. Because of this, intellect is the most valuable and holy thing in the universe. Since intellect is common in God and human beings, individuals try to reach the realm of gods using it. The sophisticated version of this intellect is called as hikmah –wisdom. For Cicero, it is also right-minded or common sense. This common sense is the highest law. This law is of Allah, who allows humans to do some things and forbid them not to do some other things. (Arsal 1948: 415-418).

When we come to the justice, it is a fact according to Cicero. It had existed before any letter had been discovered. Nature gives us the notion of justice for our potential ability to live well with other people in society. Justice is inherent in nature (intellect). Regarding justice merely as composed of rules of positive laws is a serious mistake. If that were the case, the canons of savages and dictators would also be justice. These canons, even if the mass people approved them, they would not be
B. Natural Law in the Medieval Age

The Medieval period understood the natural law within the principles of Christianity. According to Christianity and other near-east religions, God is not an objective intellect and is not inherent in the universe, but transcendent and has a universal intellect and will. In this understanding, the God is the creator of nature and universal order. Similarly, natural law is also the canon of the God’s will. (Çağıl 1956: 241).

The great philosopher and theologian of the Middle Ages, Thomas Aquinas, interpreted the Natural Law Theory by the Christianity. For him, the essence of natural law is the order which is recognized by human consciousness. This order is the sign of Divine intellect on the human being. So, the mission of the intellect is to acknowledge this order. As a result, intellect is not the creator of law, but as a means of realizing and understanding it. (Yörük 1952: 55). Aquinas’ theory of natural law influenced many thinkers after him; in fact, the paradigms of theoreticians who were dealing with Religious Natural Law were shaped by his thoughts.

C. Natural Law in the New Age

In this period, it could be seen that philosophy, science, art, politics and law freed themselves from the authority of religion. As a result of this, science and religion, law and ethics got apart from each other, and natural law was tried to be explained not in terms of Divine essence, but about concerning to the humanistic and rational bases. (Çağıl 1956: 242).

According to Grotius, who is regarded as the pioneer of modern philosophy of law, natural law is social nature of human being which is decided by common sense. For him: even if God did not exist and did not deal with worldly things, natural law would still exist. As the God never changes mathematical realities and they exist independently of the divine will, natural law also existed in such an independent way. Basing law upon reason is also rescuing it from theology. It has been maintained that Grotius rescued law from theology, and without theology, he advocated the existence of the notion of justice and gave an autonomous place to the discipline of law.

Again Grotius thought that the things commanded and prohibited by God are also the same for the intellect, as the nature, since it is created by God, natural law is inherent in humans. Le Fur, a supporter of natural law in the last era, maintained that we could recognize natural law with our spiritual emotions. For him, as natural law is inherent like human beings, it is by nature; and since it comes from birth and develops through life, it is hereditary and vested. Del Vecchio, a philosopher of law, ascribes the source of natural law to conscience and says that “We have an original faculty (ability) that does not come from deduction and it enables us to differentiate justice from injustice.” (Yörük 1952: 55-56).

II. Islamic Law and Natural Law as Theological Systems

What should be understood from the theological source of law is an important subject. During history, though encountered with different concepts, semi-rationalism, rationalism and pure theological approaching are the common problems of both natural law theory and Islamic law. It can be stated that basic principles of the thought paradigm of Mu’tazila, a theological school called as Islamic rationalists, are shaped within this frame.

The approach arguing that the source of law depends on a transcendent and metaphysical area and on the contrary, separated from the theological principles of law, the approach that law
should be completely humane and rational are always conflicted with each other. From this conflict, the pursuit of finding a midway was started and this process end up with interpreting the divine source of the law in two ways. The first one is simple theologism which argues that law is what depends on the order of a divine will or a transcendent being. The second one is semi-rational theologism. According to this, justice is not what a divine will orders as it’s will but what it has to will according to its quality of truth. According to the first thesis, something is accordrance with divine law because of God orders so. On the contrary, according to second thesis, what by divine law is ordered by God because as it is. In other words, suitability of divine law is prior to the order. (Del Vecchio 1940: 301-302).

Same principles are expressed in Christian philosophy in the following way: while in the first approach law is considered as a result of a divine will, according to the more sophisticated viewpoint, the law is an eternal possession of a divine intelligence so that the will of same divinity follows it and always corresponds to it. According to this understanding, laws of mathematics are also eternal and the divine will itself cannot act appositely because these laws belong to the wisdom of the divinity before its will. (Del Vecchio 1940: 305). Here, there is a sophisticated distinction between divine will and divine wisdom. Del Vecchio uses an interesting concept to express restriction of divine will through rational aspect that the wisdom consists. This concept is “semi-rational” which means half-rational understanding because accepting a higher criterion above the divine will which limits its will expresses a contrary approach to understanding of divinity.

According to Grotius, natural law is what right reason determines by human’s social aspect. Attributing law to reason at the same time means to retrieve law from theology. Thus, Pradier Fodere states that “Grotius rescued law from theology. He showed that the concept of right could exist without the concept of theology and in the strict sense, the law has a separate existence.”1 (Yörük 1952: 55). This dichotomy between reason- religion and religion- philosophy is a vivid discussion topic both in Islamic thought and Christian thought. This distinction became an important matter of debate especially in public law. When the law is considered as having a divine source, law becomes blessed and hold harmless from discussion. This understanding somehow blesses the state as a regulator of law and thereby, politics fall under a theological area. Objections against politics falling under theological area lead that law also should withdraw from the theological area.

III. Limitless Source of Inspiration of Positive Law

According to defenders of natural law theory, natural law has infinite possibilities for positive law. While, the idea of justice which is the most important value in natural law turns into positive law as a permanent value in a transcendental realm, it contains limitless possibilities that this idea could actualize. Because concretization of this idea or having an application area as a positive law restrains this idea, it cannot be argued that natural law doctrine’s idea of justice can be applied as a whole in positive law. It always wants to stay as the controller of positive law as idea or ideal. The positive law should search into this idea forever and should try to reach this ideal.

This goal resembles the claim that Islamic law is a system of law which can be applied in all times. Islamic law claims that it is a system that can be applied in all times and places until the end of the world because of having Qur’an, Sunnah and universal values. Thus, it can be argued that as the results from basic writings from this law by judicial opinions gain positivity via legislative

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1 Grotius wanted to establish an international law depending on natural law theory. As he cannot attribute a theological value to international law, he started to work by detracting natural law theory from theological area. Some jurists argued that the reason behind not establishing an international law depending on religion was the conflict between Catholics and Protestants during that era. (Del Vecchio 1940: 300).
prerogative of the state, it has endless possibilities. As a matter of fact, great jurists in history performed a success by their judicial opinions which can be multiple choices for positive law.

According to defenders of natural law theory, this law appears as not a single system but as different systems of natural law. As it is known, different systems of law are born, developed and end during history. Because of this reason, there is a need for a higher and permanent regulative principle to be the standard for positive law. This is the idea of justice or the idea of natural law. As Çağlı stated before, it is necessary to search for the natural law because he argues that searching for the idea of justice is in the nature of man. (Çağıl 1949: 93).

Having different sects in Islam and the legitimacy of the positive law applications depending on these sects is parallel to this understanding. The reason is that, during history, there have been applications of positive law depending on the paradigm of one of these sects via the authority of the state. For instance, in Andalusia, views of Maliki School had an opportunity to be applied as a positive law. Today, even though the success of the applications is debated, Kingdom of Saudi Arabia claims that Hanbeli School’s views are applied as positive law. Even if Saudi Arabia is a concrete example of this situation, it is not secured from criticisms whether it is a successful system or not. There is a common opinion that the choice is political rather than juridical.

IV. Positivity of Law

According to natural law theory, the idea of positive law should be the idea of justice. However, this idea of justice has a faint structure due to its transcendental and abstract structure. Positive law has always searched for the idea of justice formally but it cannot construct a paradigm equivalent to this idea. This notion is also a discussing issue in Islamic law with a different perspective. According to Islamic perspective, are jurisprudences given by Islamic lawyers convenient to the will of Shari (lawmaker). In other words, true gained by jurisprudence and true in the level Shari are compatible. Are all jurisprudences on the mark? This topic was discussed by Islamic lawyers deeply. Nevertheless, in this topic, Islamic law is differentiated from natural law in a basic point because in Islamic law, the will of Shari is transferred into life normatively by Quran and as positive law by the applications of Mohammed.

There is also an important difference: There is no criterion in natural law that tests the compatibility between the idea and application. However in Islamic law, there are three basic criteria could test the compatibility of any jurisprudence that has a feature normative source for positive law to the will of Shari. One of these is Quran as a divine remark; the other one is the applications of the prophet that are formed by the control of divine revelation and named as Sunnah. It is known that any application that is based on the jurisprudence of Mohammad and against to the will of God was immediately corrected by revelation. With this perspective, Sunnah is evaluated as memorandum revelation, namely the application approved indirectly by revelation. Third important criteria are the values Islam wants to fulfill as religion. This hierarchy of values is classified with different sequencings like this: the protection of religion, life, property, intelligence and generation.

One of the jurisprudences of the Islamic lawyers, who are accepted as authority, could be selected by government will and transferred into positive law as a norm. If these norms conflict with the values, whose frame is designated above, they could be desuetude and a new jurisprudence could be transferred into positive law as a norm instead of that norms.

Natural law has never been totally in operation as positive law but has remained as idea and ideal. Even it targets to maintain its existence as the ideal values of positive law without constructing a paradigm. Nonetheless, Islamic law was applied as positive law as well as its transcendental source. Moreover, this law does not see the reality of the transfer of law with divine source into positive law.
as characteristic to only it. Conversely, it approves the reflections of divine will were existed as normative principles in the lives of preceding prophets in the area of positive of law and converted it to the judicial criterion and takes it into account by naming “şer u kablena” (the law of formers)

As their common point, unless they could not find any positive application area, Natural law and Islamic law do not depreciate. According to the supporters of the natural law, the idea of law or justice, even does not actualize as positive law, this situation does not diminish from natural law and never abstain from being the target and the ideal of positive law. Some lawyers find having such an expectation contradictory to the doctrine of natural law because natural law system which has certain and stable content could not realize the function of being idea and ideal for positive law. (Çağıl 1949: 96).

Those support their claims with such an example: Just as no one has achieved to be perfect in a moral way until today but being perfect is still an aim. This ideal is still alive and even all people would be immoral, morality does not lose anything from its judicial value. (Çağıl 1961: 47). Natural law is also an existing idea. Natural law will not lose anything from its value even if it is not aimed as an idea or ideal for a theory of positive law. Intrusion and invasion could never take law away. (Yörük 1952: 138).

V. The Refusal of Rationalist Approaches

There is a similarity between the situations of natural law theory and Islamic law against rationalist approaches. However, there is an important difference in terms of the process. The struggle of the supporters of natural law theory against positivists became in 19th century when positivism hit the top. Until this century, there had not been faced with an important resistance. Nonetheless, Islamic law had faced with rationalist approaches until the era of doctrines which is the shaping era and this mutual tension has maintained its existence until today. This process began with the approaches of Mu'tazilite which is the theological schools of first Islamic rationalists and maintained its existence until today by increasing in 19th and 20th centuries. In this last two centuries, the backwardness of Islamic world against Western civilization raised the position of these positivist approaches to the more rightful situation. Nevertheless, the apologetic attitude in these new approaches and non-peculiarity of the paradigm constructed with this attitude makes the achievements of the supports of these approaches skeptical.

VI. The Relationship between Law and Morality

The relation of natural law theory and morality and the relation of Islamic law and morality are one of the important areas that should be compared. Even if it is in different eras and different tones, it is seen that moral values have an important role in general in doctrines relying on natural law idea. Moreover, hence moral values of natural law theory are in the central position, it was seen for a long time as morality and natural law theory are equal. For instance, the natural law school of Grotius, which was tried to be spread by Puffendorf, made natural law and morality more closer as they are equal to each other. Even in our time, there are people who accept natural law and morality as same things. G. Renard says that “natural law is not a different thing from social morality”. (Topçuoğlu 1953: 66). In the 20th century when rationalist understanding is at the top of all sciences, Thomasius separated law and morality and made morality against law. Grotius and Thomasius are the thinkers who are known for their great attempts to separate natural law from religion and morality.

When it was coming to the 20th century, interest to the philosophy of morality increased and therefore, tendencies for the acceptation of over individual system of value and norm raised. Max Scheler, who lived in this century and was one of the most important representatives of modern moral philosophy, was a philosopher who took the problem of morality widely and seriously after Kant.
The natural law entered into evolution process in the 19th century which is called late German idealism. This idealism is theist metaphysics. This metaphysics has three important features. These are personal understanding of God, metaphysical anthropology and the combination of law and morality. Max Scheler synthesized the tradition of natural law that takes force from that idealism. Ulrich Wirth, who lived in the same period, tried to construct ethical theism. However, he discriminated between ethics and pure ethics. His most important is that “moral intelligence is superior to theoretical intelligence.” (Çağıl 1956: 243-244).

As it was designated before, natural law theory was seen as a moral theory at more times. It is compulsory for Islam to define the relationship between law and morality because of the fact that religion, law and morality have common targets in terms of source and aims. It is important in this frame to compare natural law theory’s being moral paradigm and the relation of Islamic law and morality.

Law and morality are two important areas which have a duty to supply social arrangement in general that named “social arrangement rules”. Both of them are social arrangement rules, arrange social interactions and hence are encouraged materially and their social aspect is superior. Morality is an area that describes social behavior and evaluates it. Thus, it relies on spiritual enforcement and its individual aspect is superior.

As if there are similarities between law and morality in a formal way, there are also similarities between them in terms of their content. However, morality is discriminated from law when it talks about making his heart pure, being honest for himself, not having spiritual conflict and person’s duties for himself. Conversely, law is a reflection of social life. Similarly, morality has also a role in social life. (Aral 1975: 70). Unless the thought converts into behavior, it cannot be the topic of law. Nevertheless, it is the topic of morality and religion. Bad mentality, even if it is not reflected in behavior, has an importance in a moral way.

There are two values of people’s deeds as positive and negative, according to Islamic law. These are good and bad in terms of morality, legal and illegal in terms of law. The goods in terms of morality are legal in law and the bad things in terms of morality are illegal in law. The law and morality interlock to each other and make an organic complete picture up. Morality is more wider in terms of content and aim and it also constructs the basis of law. Because of the fact that Allah and religion he sends are the judges that decide human deeds as good and bad, there is a commonness between moral and judicial acts. In Islam, religion and morality are one and the same thing and religious orders and moral duties are same. There is no moral order which is not religious order.

A. Norm of Law and Morality in terms of Aim

The aim of the law is justice. In other words, the idea and ideal of law are justice. However, the aim and ideal of morality are to actualize “good”. The discrimination between justice and good is shown in the idea that justice is a social value, it aims to accurate social arrangement that makes everybody pleased and conversely, the good, which is the ideal of morality, is a value interest with individual and his accuracy. (Aral 1975: 77). The people who insist on the difference between law and morality stress out that there are differences between them in terms of aim because law aims justice and morality aims well.

Nonetheless, the supporters of the natural law, especially Çağlı frequently cited by Aral, claim that law should have an aim to actualize good by giving a spiritual aim to it. According to him, the norm of law should have a notion of good in addition to its formal logical, transcendental logical and empirical notions. This notion of good is reality, freedom and justice. The norm, which does not have these notions, is law in formal, judicial and logical ways but not law in objective content.
However, it is necessary for law to discriminate between formal legacy and material legacy. Positive law should include the good notion in order to be law. This good notion is the idea of justice. Therefore, the thing which is holy in that topic is not the will of lawmaker namely laws or positive law. Conversely, the holy thing is the idea of law that lawmaker has to actualize in laws and positive law. The positive law that is coherent to the idea of law and justice is not only the product of formal logic and apparent intelligence but at the same time is a composition of logic, morality and conscience. The thing makes law is not its carrying the character of will in certain forms but the idea of justice and the notion of good. Hence, positive law is not always the objective expression of justice. (Çağıl 1961: 25).

B. Law as Heteronymous and Morality as Autonomous

Law has heteronymous character besides its autonomous dimension. Nevertheless, morality has totally autonomous character because the spiritual aspect of the human being cannot be reached to proficiency forcibly but by the decisions he makes by himself. The duty could be made forcibly but the consciousness of duty cannot be made forcibly. (Aral 1975: 80). According to Pareto, law penalties are formed of the principles consisting public orders but morality is just formed of the principles that are ordered by inner man. (Yörük 1952: 44).

It is talked about the extroversion of law and introversion of morality because of the autonomous character of morality and heteronymous character of law. The orders of law are the products of the will that is external and superior to individual. It is talked about making law and heteronomy in law and government makes laws. However, morality is the product of individual’s inner man. In the area of morality, without making law, it is talked about autonomy. The norms of morality do not have lawmakers other than individual mentality and inner man. The man who is an authority in deciding an act concerning whether it is moral or immoral is a man himself. However, not having an external authority to decide moral and good, having an authority to decide his own acts’ morality do not mean that there is no limitation in the will of a person and there is arbitrariness. Conversely, morality is about the arrangement of over-individual values. Morality as relying on the arrangement of objective values, it is not important whether it is actualized or not, is a pure morality or “what should be”. The aim and ideal of all ethicality and morality is to actualize pure “what should be”. Therefore, all orders, if it is the saying of a thing which is self-valuable, are real orders. Not only morality, but also law has an autonomous aspect. As it is known, law works for justice which is the idea of law and actualizing it into social life. (Aral 1975: 74-76).

C. The Cosmic and Legislative Field of Islamic Law

God is the cause of everything in the cosmological sense as well as the cause of law and morality in the Islamic thought. According to Islam, what we call natural laws as the laws of the physical world and the laws of the people and communities in need, social, legal and ethical regulations are originated from the same source as general principles. In other words, the cosmic and the legislative field are compounded in source. Legal and ethical provisions in the Qur’an are not strictly separated, one of these provisions are arranged so as to form a complete whole. The effective criminal sanctions in Islam which are capable of deterrent in the crimes has taken place as the norm of law, a source of law in the Qur’an and the Sunnah. But the crucial, training of human beings as having a moral virtue, the preparation of opportunity for the develop of the spiritual abilities. But only, by passing with the moral education people adopt and implement the goodness, a social order would have been established without need to apply the criminal sanctions. The only material rules and criminal sanctions are not always enough to direct the human as a sophisticated being to the goodness and charity. A human being is almost divine and demonic forces field of conflict state. Therefore, it is difficult to keep people under control. The human has a feature of production and
consumption and these characteristics are not restricted. Human can exploit others for his own benefit, may be harmful to them. In addition, the human of being has high moral characteristics as useful to others, compassion, sacrifice. The moral and legal provisions and their sanctions are mentioned successive and nested in the Qur'an, shows that morality and law as a whole in Islam. A mu’min (believer) sincerely complies to the norm which is supported by the material sanctions.

Islamic jurists also focused on the need to deeply feel regret beside the penalized with the material sanctions of a mu’min. Even also, they discussed issues as if he did not repent then he will take punishment in the Hereafter. As a result, a person who commit a legally prohibited crime, even after serving his sentence, then he should feel sincerely regret to commit that crime. The Sufis who handled subject in an eschatological point have been arguing this in a different dimension. According to them, the real crime, the person committed the greatest fault by committing an act which is prohibited by the Creator. The opposition to the will of God is the biggest fault in terms of worship consciousness. In this respect, both the prophets and great Sufis, described small moral failings as persecution in terms of their own that are not considered as fault for ordinary people.2

Law and morality in Islam as it is nested, what we call “respect to the law” faith in the Shari (God) and “consent” to His Law is a matter of morality. More clearly, to accept halal as halal, haram as haram faith and a moral attitude which means that accept from the start to respect for the law and to be trialed according to that.

D. The Conscientious Dimension of Adherence to the Law

Today’s sense of law regulates the outer side of the actions, and is aiming to make people who make up only the actions as a good member of the society and a good citizen that does not harm the affiliated whole. However, if the citizen reluctantly obeys the law, but only acting according to law, he is doing what the rule of law wants him and legality itself is fulfilling. There are cases which law takes into account the spiritual element and the inner dimension of the actions e.g. intention. However, it is understood that the external aspect of the actions has a central importance in the law, the domestic dimension of the actions has a lesser importance, the path followed in the evaluation of behavior and actions by law is from outside to inside. (Aral 1975: 78-79).

Human who has reason and conscience acts permanently according to law, the extend to understand and internally ratified to it. Human, in the face of the supreme power who make the law, does not want to blindly surrender with all the body and spirit. Law is not law because it exists and is known, on the contrary, it is law because consciences of those of a society who thinks a whole equitable and fair is approved. The nature of law, it is not only an order compelling based on raw power, but also, and more in terms of ethics contains a sight that a binding order. It is faced with a moral issue in the business of law-making. An order as may be appropriate for justice needs to be occur in some logical forms also in according to a certain system. More explicit words, this arrangement must be a logical and planned system which does not contain a logical contradiction and space. Law must be correct both in ethical sense and logical aspect. Because of this, only the logical evaluation is not enough in law, it must be completed by the ethical evaluation. So, law does not describe a logical arrangement of the social life but more than this, it defines the moral arrangement of it. In this regard, the decision obtained concretizing a norm really be credible is possible but its deduction of logic and perceived as equitable. (Aral 1975: 157).

2 And remember Zun-nun (Yunus), when he departed in wrath: He imagined that We had no power over him! But he cried through the deptHs of darkness, “There is no god but thou: glory to thee: I was indeed wrong!” Surah Al-Anbiyah, 21/ 87.
Welcome and sincerely commitment to the norms is essential in the Islamic law. This feeling is so strong that, the examples of those who admit to committing the crime itself is countless minimal. In fact, many of these acts, in spite of the weight of crime correspond to the physical conditions set for the accrual of penalty was accrued as a result of these confessions. When it comes to the field of ethics, the moral here is that the realization of the good, especially in the interior of verbs, as well, the spiritual element is subjected to evaluation. Therefore, contents did not occur in the external world, the latent thoughts in any way, even if the law is subject to the provisions of moral values in spite of not be able to evaluate. Even the good will come to existence by an act in the world outside, so only it does not take the quality of good, however, the morality does not be fulfilled. This is also the source of the external behavior in terms of goals that must be good in terms of good faith, as well as a spiritual. (Aral 1975: 79).

The aim of morality pursue, turns to the good all the unity of the internal and external behavior and to glorify human’s the true sense of the word the personality. Having morally more importance of the inner aspect of the acts, going to the inner from the inside out in the moral evaluation, contrary to law, the cause not be able to legalize by identifying with open formulas of the morality. Because, how a mental state and a mindset should have in the human behavior is determined by the behavior of individuals, one by one in different situations. The source of the moral norms is not the conscience of the individual in the Islamic law. In other words, the person has not designated by himself that a behavior is good or bad. In the history of Islamic thought has experienced a long debate on this subject both theological point of view and the legal terms. It may be said that, the effects and results of the conscience dimension of the moral norms social regulating may be more effective than legal norms.

E. The Common Area of the Law and Morality

It is not possible to distinguish between law and morality precisely. Though the law does not directly a moral order. Because it’s the first goal is arranged external relations of the people living in the community externally. The ultimate aim is to realize the moral-mental scheme. Law aims to ensure the needs of society and individuals in the first place. Arranges them technically almost. In this way, at first glance, a view of “technical rule of law” submits. But the law, in terms of the ultimate goal is a logical and moral order. Because the ultimate aim of law is to realize the justice. Justice is a moral concept and thus, a bridge between law and morality. For this reason, a law order which is contrary to the moral principles loses its own the character. Thus, although there is a difference between law and morality in understanding, still, law should be based on the morality.

There are separated points as well as the common points of the law and morality. Justice which is the ideal of law and expresses a social value is also good. For this reason, justice is a moral concept. Some relations appear between moral and law because of this common point in ideals. (Aral 1975: 82). The moral and law rules which come together under the ethics rules are in the same source and there is a big closeness between them due to existing in order to meet the needs of similar to each other. (Yörük 1952: 42). Act in the suitable to the law is measured in terms of only the external appearance of motives in an objective manner, regardless of the appropriateness of legal norms. (Aral 1975: 73). In fact, the law is not related to only the external acts and morality alone the internal acts. In this respect, the detection of the distinction between law and morality is not seen enough the rotation of law outward and morality to inward. The law takes into account internal acts, mentality and state of mind. In fact, in the law intent in compared to negligence, bad faith in compared to good faith are evaluated differently. Particularly in the field of criminal law malice, intent, neglect the legal consequences of such situations is different. (Aral 1975: 157).
a. There may be a unity between law and moral in respect to subject and content

Indeed, the prohibition of murder and so on some of commands appear to be as subject matter and content of the commands of morality as well as law. For example, the forbidden of killing a person is both a subject of law and morality. (Aral 1975: 82). These areas are completely nested in the Islamic law. An act which is forbidden by the law appears as morally bad and religiously sin. Anyone functioning of such behavior even if the guilty is not detected by legally, he committed morally and conscientiously bad behavior. Even if he does not take a punishment legally for this behavior, the belief to be punished for sin by spiritual is dominated.

b. The law allows the realization of morality

A behavior in accordance with the law may be a request of morality, but this request and command should not be understood as obligation to comply with all the norms of the positive law in the form of individual. It is understood that the fulfillment of every legal norm, will be obligation to qualify as a behavior will be made morally for the sake of good. But, many norms of law tends to behaviors which are not related to the morality. Some of them even in terms of morality, far from being a fair statement of law found in or create a doubt in this regard. (Aral 1975: 83). Care has been taken not to open at the scissors between law and morality in Islamic law. In fact, emphasized that complying with the law at the same time is a value of morality command, this peaceful state will contribute to the security of a very constructive.

c. Moral also supports to the law.

According to Papinianus who is one of the major lawyers; the law can not be separated from the moral in no way. An act which is contrary to morality, never can not be lawful. Therefore, although a behavior may seem like lawful, if it is contrary to morality, it is not permissible to do. (Arsal 1948: 406). As it is known, the law compares the two subjects; allow for a subject area of facility and power and to the other subject loads a task.

Therefore, enforcement and compulsory step in the law. It is claimed that the legal duties are superior to the moral duties because of the possibility of the compulsory which distinct law from the morality. But, it can not be claimed that the law is perfect for this property of it than the morality. Because, this, only is nothing more than just a difference like sanctions. (Yörük 1952: 135).

Conclusion

The nature law is acquisition content of the justice. Thus, it is above and out of positive law. The justice which is responsible for carrying out by the law, is a formal idea and for that reason, it is necessary to gain a content. The law may expect a certain behavior from a man only for the name of the justice. Law of the rule of law, to be directed towards justice in terms of its essence, is that reflected a particular view of justice. The law may command a certain behavior only for the name of justice. An order in order to acquire character of the rule of law must be in accordance with conscience and mind. The idea of justice exists in the transcendental realm and contains infinite possibilities that take place of this idea. This idea makes into concrete or finding as positive a field of application makes itself limit, can not be claimed in the natural law doctrine idea of justice as a whole has never been applied to positive law. It must constantly remain as idea and ideal in the position of controller the positive law. Positive law should investigate this idea forever, be in a constant quest to achieve this ideal.

In the theory of the nature law, idea should not descend from metaphysical realm to the physical realm. But, however Islamic law is a divine origin, it never has an aim as to remain metaphysical. Even, in some religions; the known of this law seemed as belongs to only the cleric.
class, in the Islamic law, this right has not the monopoly of anyone. In fact, in the history of Islamic law jurists are that people outside of the Arab community which this religion come.

The subject of the separation of the sociological application of law and philosophical application is extremely important in terms of the philosophy of law. The values for social life which are suggested by the Islam, even if it does not apply in any society includes the believer of this religion, these values do not lose any worths as philosophical. In other words, not application of the values in vertical dimension on the horizontal dimension or can not present a successful image in the social life should not lead to a concern for defending these values.

The values on vertical level from transcendental origin and their actualization on horizontal level are extremely important. The image of these values on horizontal level, successful or deficient applications should never be criteria for the values on vertical level. In other words, not presenting positive images in a positive law that depends on these values and social life should never bring these vertical values into disrepute. Only when the issue is handled with a plain logic, such a life model emerges from these values. Then, a view that these values are not at peace with the facts of life is not acceptable. In Islamic societies, images in horizontal level should not prevent defending values at vertical level. Intellectual perspective requires this. This situation is a distinction that defenders of Natural Law Theory insist on. Failures of applications of positive law which depends on natural law theory will never be charged to this theory.

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