

Thoughts on Legal Culture

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I will introduce these thoughts with a simple introduction on the law and its importance, and then divide the thoughts into three chapters.

The first chapter will address the need to respect the rule of law, the second will address the sources of the law, while the third will consider conflict resolution.

I would like to express my apologies for the special language and terminology of the law, which may seem strange to non-specialists. In spite of my attempts to write these thoughts on legal culture in a simple and clear language, I was always bound by the severe and specific language of the law, which may not appeal to some, especially the young. I hope I was successful in offering some important and important legal information to the reader. If they would like to know this information, they will be able to, God willing.

May God grant us success in our endeavors

Prof. Dr. Ali Najideh

Chapter One

Why the Rule of Law Is Respected

First: Why Do We Respect the Law?

The answer that comes to mind immediately is: we respect the provisions of the law for fear of the penalty or punishment against those who break it. I stop at a red light for fear of the penalty imposed on those who do not stop, which may lead to imprisonment. The same applies to the rest of the provisions of the law. This is a mistaken view.

The good and aware individual must respect the provisions of the law. This is not for fear of a penalty or punishment that may be imposed, but due to the belief in the usefulness of the provisions of the law and the necessity of these provisions to live securely within a group, until this belief becomes a general behavior, a prevalent methodology and a strong creed. You will find yourself in your car standing before a red light until late at night even if there is no one else but you. This belief will turn this behavior into an automatic behavior that automatically prevails whenever you find a red light, to preserve your life and money and the life and money of others.

The red light is merely an example that can be used to measure all provisions of the law. We do not kill, steal, defraud or dishonor. This is not for fear of punishment for committing these actions. This is out of our belief that our lives will not be proper and that we will not feel secure or safe in terms of our money, honor and lives unless we respect the provisions of the law that prohibit these acts.

An honorable individual who applies this as a behavior and a belief will help establish an honorable society where this feeling prevails among its members.

Penalties and punishments remain in place for those who can not elevate their feelings and behaviors to this elevated level of human behavior.

The Law and Its Importance

The law, as a group of rules that regulate the relations of individuals in society, where individuals are made to respect the law by force when necessary, is considered the ideal method to regulate the relations among individuals in society. Life within a group cannot be imagined without a law governing the behavior and actions of the individuals. Without the law, the law of the jungle would prevail, the strong would eat the weak, crimes of various types would become widespread, individuals would be dishonored, lives would be lost, money would be taken without right, chaos would prevail, corruption would become widespread and life would turn into hell.

Yes, the law contributes to the stability of interactions and the entrenchment and spread of security, along with religion, morals, customs and traditions. However, the law remains the most able to achieve security and stability because the penalties are immediate, are imposed by the public authority of the state, and are a physical and tangible penalty.

The law does not aim to impose restrictions on individuals within society in the enjoyment of their lives and rights. It is in fact a response to the requirements of life. By observing certain phenomena and behaviors within society, which continue for a certain period of time, officials tasked with drafting or creating laws find themselves before some phenomena that may ruin the lives of individuals as well as their social, economic or political security. The law thus serves as an effective method to preserve society, because of its generality and abstractness in implementing the principle of equality among all those addressed by its provisions. This makes it acceptable before its acceptance is imposed on individuals through penalties.

An individual living within an organized and civilized group enjoys rights and also has duties. Each individual may fulfill his legitimate desires without undermining the rights and freedoms of others. The way to regulate this is through the law. Saying otherwise leads to disabling society's movement and disabling the ability of individuals to practice their rights. Due to their disrespect of the law, violators today may find themselves tomorrow incapable of practicing their legitimate rights because of the violations of others. This is all due to a mutual lack of respect for the provisions of the law and the non-application of the law equally among everyone.

The Principle of Legitimacy and Its Relation to the Rule of Law

This principle generally means that the law in its broad sense is the source of rules and provisions applicable to a society's members, in order to guarantee in essence the respect of their rights and freedoms, which can not be violated without a legal basis. The principle of legitimacy is a main pillar of modern criminal systems, and it supports and entrenches the principle of the rule of law. As long as all members of society are addressed through a clearly defined legal rule, they will accept being subject to it on an equal footing. Education about the law will also entrench the principle of the rule of law so that in time members of society will realize the importance of social values and the various interests that the law takes care to regulate and protect. All this strengthens the spirit of national loyalty and strengthens the social fabric.

In the same context, the principle of the rule of law cannot be achieved without the independence of the judiciary in the state, which is tasked with applying the provisions of the law for everyone without discrimination based on origin, money or otherwise. However, independence alone is not enough if the members of the judiciary do not demonstrate integrity and neutrality when ruling on conflicts and disputes among members of society. Integrity and neutrality entrench citizen trust in the

judiciary and in justice, which in turn entrenches and supports the principle of the rule of law within the state.

Second: The Principle of the Rule of Law and its Importance

The law is vital to the existence of a group and its security. There is no group without the law and no law without the group. However, the existence of the law in and of itself is not the guarantee for the group's safety and stability. More importantly, the existence of the law is its rule. The rule of law means the application of its provisions to everyone without exceptions for rulers and subjects, rich and poor, and strong and weak; regardless of origin, relations, tribes, families, and the economic or social status of the individual. As everyone has the right to live equally, everyone is equal before the law.

Anyone who commits a crime regardless of its degree is subject to the penalty allocated for it, regardless of any other consideration previously alluded to.

The ruler of the state, regardless of his capacity and regardless of the legal method through which he assumed rule; all state ministries and their employees; the three powers in the state: the executive power (the ministries, public commissions and public institutions in the state), the judicial power (the courts of various degrees, the judges and their aides), and the legislative power (parliament), are as members of society. Everyone is equally subject to the provisions of the law.

Prophet Mohammad, peace be upon him, said (why would you let an honorable person go if he steals while you apply the law if the weak among you steals! By God, if Fatima daughter of Mohammad were to steal Mohammad would apply the law to her). This is considered a wonderful application of the principle of the rule of law.

The Effect of the Principle of the Rule of Law

This principle of the equality of everyone within the law leads to the rule and spread of social peace, a feeling of true equality and a feeling of citizenship. Everyone belongs to one nation that treats them in one way; all their rights are guaranteed to the same degree. This feeling also leads to inner satisfaction and contentment, as well as prompts work, production and dedication in the service of the group. Everyone would be ready to defend the group with their lives if they had to.

This is in addition to the fact that the rule of law means the rule of justice. Justice is the most noble and elevated of concepts. Whenever injustice is curtailed and justice prevails, people are reassured and effective, productive energy is released, love prevails, and hatred and jealousy (destructive elements to society and individuals equally) fade away.

Thus, it is not strange to measure the degree of the nation's civility and advancement through the entrenchment of the principle of the rule of law within them.

The principle of the rule of law, in spite of its greatness and importance, is not something to be said, a slogan to be proposed, poems to be read or programs to be broadcast. It is a principle with academic origins, methods of making it work and the opportunity to make it work in reality. This is the duty of several entities, official and popular.

Chapter Two

Sources of the Law

When we say sources of the law we mean where the law draws its provisions that apply to everyone without exception.

The sources of law in Qatar, in the sense that the judge resorts to them to research a ruling on the dispute before him, are legislation, the principles of the Islamic Sharia, customs, and finally, the principles of justice.

I will briefly explain each source:

1. Legislation

This is the legal rules set by the legislative power (parliament) in a written form. So, they are legal provisions drafted by parliament. However, how is legislation passed and how does it become binding?

Legislation (which is called the law in the common language) such as the traffic law legislation originates as follows:

1. Proposal submitted either by the relevant minister or any member of parliament (45 members, 30 elected and 15 appointed by the Emir)

2. The proposal is discussed in parliament. If it is supported by the majority of the parliament members in attendance (i.e. half of the attendees + 1) the bill is considered approved by parliament and is submitted to HH the Emir for certification and issuance.

If the number of those who approve the bill among the parliament members in attendance is equal to the number of those who do not approve it, the side on which the parliament speaker votes shall prevail.

3. When the bill approved by parliament is submitted to HH the Emir for certification, the Emir may certify it or object to it.

a. If the Emir objects to it, the bill is returned to parliament once again for reconsideration. The Emir justified his reasons for rejection.

Parliament may re-approve the same bill as it is without amendment, but with a two third majority, and submit it once again to HH the Emir to issue it.

b. If the Emir approves the bill submitted by parliament, it is published.

4. After passing the legislation (i.e. the Emir grants approval), it is published in the official gazette (a special gazette for the publication of legislation, regulations and instructions. It is not a daily newspaper).

The benefit of publishing the legislation in the official gazette is to inform everyone so that they abide by its regulations. The publication stipulates the date the legislation shall come into effect (i.e. the date of implementing the provisions for everyone).

This overview clarifies the sovereignty of the principle of the rule of law. Parliament may, in spite of the objection of HH the Emir, insist on it with a special majority (two thirds of parliament's members).

2. Principles of Islamic Sharia

If the judge cannot find a settlement for the dispute before him in the legislation, he must research for a settlement in the principles of the Islamic Sharia, looking to general principles without bias to a certain school of thought. There are rules and principles in the Islamic Sharia that offer a fair settlement to most disputes, such as the principle of honoring pledges,

removing the cause for damage or harm, and the prevalence of public interest over private interests, in addition to various other rules.

3. Customs

If the judge cannot find a settlement for the conflict in legislation or in the principles of Islamic Sharia, he must resort to customs, which is the way people have behaved for a long period of time so that people feel that this behavior is binding for them. It is an old public custom that does not violate public order, which people have followed for a long period of time.

4. Justice

If the judge cannot find a settlement in any of the previous sources (and this rarely happens) he shall resort to the rules of justice. These are important, just and exalted rules that are aimed to grant justice to anyone who has a right, and they are comprehensive rights that recognize equality among humans regardless of color, gender or religion. The judge knows these from his extensive knowledge, without influence of his personal beliefs or what he believes to be justice.

The source offered by legislators to the judge (laws) aims to avoid putting the judge in an awkward position. A judge cannot tell litigants that he cannot find a legal provision that settles their conflict, because he will have in this case committed a crime of denying justice. This is why the legislature gives judges a rich resource in which they will certainly find a settlement to the conflict before them.

From this overview, it is clear that the legislature does not leave matters to the judge to resolve as the judge sees or believes according to his desires, beliefs or political or religious thoughts. Rather, the legislature provides these sources to guide a ruling, and judges are obligated to abide by them in the same order they are listed. This ensures justice for the people and ensures feelings of confidence and reassurance.

Chapter Three

Mechanisms of Conflict Resolution in Society

We agreed that humans are social creatures. They can only live within groups, and therefore there is no group without individuals and no individual without a group. This is far from a philosophical theory.

If there is a group, interests and desires will come into conflict, because humans are selfish by nature and the group's resources are not sufficient for everyone. This is in addition to the fact that each individual believes he alone is just, knowledgeable and good, and that no one else is so, as well as being of sound opinion, mature thought, and a provider of solutions to every problem. He therefore believes he is right and others are not.

Here arise conflicts of various types. They may be international conflicts or local economic, civil, family, simple or criminal conflicts between two parties or between tribes.

The method of resolving the conflict depends on its type, complexity, number of parties involved and the subject of the conflict.

There are many ways to resolve conflicts:

1. Simple apology: If a colleague, neighbor or friend commits a mistake it is enough as a method of resolving the conflict to admit to the mistake and ask for forgiveness from the other party. There is not truth at all to what some youth believe, that an apology reduces the worth of an individual. On the contrary, it indicates his true worth and origin, and increases his friends.

2. Reconciliation: This is resolution of the conflict through someone else who is not a party to the conflict, who may be older, or may have more experience or more responsibility. This individual may have the ability to offer recourse along with a

financial restitution, unless the person who was wronged decides to waive his rights.

It must be taken into consideration that these methods of conflict resolution are not restricted to youth and students. It is appropriate in all cases and has positive effects, specifically in eastern societies where emotions and chivalry still play a major role.

Reconciliation as a method of conflict resolution may also be in the international arena. Countries may resort to it to resolve conflicts among them, especially in areas related to joint borders.

3. Arbitration: This is a more complex method compared to the previously stated ones, and it is usually resorted to in conflicts of a large value as well as economic conflicts. It is also used in family conflicts, as urged in the holy Quran.

Arbitration can be used for internal conflicts between individuals, between companies, or between companies and the state. Each party to the conflict selects an arbitrator to his liking, and these two selected arbitrators will choose a lead arbitrator. Parties to the conflict may also choose an arbitrator as well as a lead arbitrator.

The parties to the conflict may also agree that the ruling of the lead arbitrator is binding to them, and that they must implement it as they would a court order. They may also agree that it is not binding unless both parties agree to it. In this case, arbitration is considered ineffective in many cases. Arbitration may be final so that no party may appeal it, in the event they are not pleased with the decision, or they may specify the entity to which they may appeal the decision.

There are professional international centers that handle arbitration in conflicts submitted to them by the parties, and decisions are issued according to their specified procedures.

Arbitration is considered a quick and easy method to resolve conflicts, and it allows the parties to choose a trustworthy judge in their eyes. The most important drawback to arbitration is that it is very expensive, and it may not resolve the conflict unless the parties agree to abide by it.

4. Resorting to the courts: This is most prevalent method of conflict resolution among individuals. The courts can be criminal, with jurisdiction for crimes of various types, including misdemeanors, felonies and violations, where the case is filed by the public prosecution as a representative of society. Cases can also be civil, with jurisdiction to hear conflicts between individuals or between the individuals and the state. Recently, an administrative judiciary and a constitutional judiciary were established in Qatar, with jurisdiction to hear cases on the legislation and regulations' violation of the constitution. In essence, they monitor the constitutionality of the laws, and this is another important element of the principle of the rule of law.

Individuals have more faith in the rulings of the judiciary and the achievement of the rule of law when the judiciary is an independent entity and judges cannot be removed from their positions because of their decisions, making them accountable only to their conscience. Another guarantee for justice is that the judiciary has three levels, where the case is filed before the first instance court. If one of the litigants feels that the ruling did not do him justice, this can be challenged in appeal before the second degree court formed of more judges (three judges) who are also more experienced. If one of the parties feels that the appeals decision did not do him justice, this can be challenged before the third degree court, which is the court of cassation, the highest level of litigation. The case is heard before seven judges

who are the most senior judges in the state in terms of expertise and rank.

There are procedures and timelines for filing cases and appealing them, as well as for the implementation of the court rulings, both in the criminal and civil courts.

Finally, at the end of these thoughts on legal culture, we sense the importance of the law and its necessity for life within a community. We cannot image a society without laws that regulate its rhythm and the behavior of its individuals.

The provisions of the law apply to everyone without exception. This is an international constitutional principle. The constitution is the highest law in the state, which comes at the top of the legislations. It rules everyone, and no legislation may violate its provisions, or else it is considered unconstitutional, and is removed by the constitutional department at the court of cassation.

The constitution is considered the highest law in the state and the most important. It determines the formation of the state, the system of rule, how the Emir is appointed, his rights and his duties, the powers of the state, including the legislative, executive and judicial, as well as the relationship between them, to ensure the principle of the independence of the three powers and their separation. It also determines the rights and freedoms of individuals.

Because of the important issues regulated by the constitution, there are special and complex means to amend it that are different from the procedures to amend normal legislation. This is to ensure its provisions are not amended except in cases of absolute necessity, through these special procedures.

May God grant us success in our endeavors