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A Descriptive-Analytical Approach in Explaining the True Relationship between Legislation and Ethics in Islamic Thought

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Abstract

Some scholars believe that the Islamic legislative system is an independent system with its own references and methods, which led to its success in the past in organizing and managing the society and its institutions. As the Islamic legislative system moved away from its references, specifically when it was confronted with modernity and its philosophical, scientific and technical aspects, it failed not only in responding to them, but also in keeping pace with them. Deviation of Sharia from morality is believed by one group of scholars, to have led to the failure of Muslim reformers' and Islamic conciliationists' attempts through conflation and patchwork. They argue that modernity is mainly based on functional (Kantian) and utilitarian-instrumental (Pantami) ethics, and cannot be compatible with Islamic values. Therefore, restoring morals to Sharia will be the only solution to get out of the crisis facing Islamic Sharia. They conclude that re-drafting Sharia based on ethical foundations can suffice the establishment of a legislative system and a modern Islamic state. This cannot be done by reconciling modernity and heritage, as Islamic thinkers and reformists have been calling for since the beginning of last century, nor by separating religion from the state, which secularists call for. Scholars of another school have a different opinion about the Islamic legislative and jurisprudential heritage and see the impossibility of achieving such a goal, because it stems from the same theological and jurisprudential system, and relies on the same jurisprudential thinking. They suggest that the solution lies in transcending jurisprudence, based on the assumption that Sharia does not represent Islam. This will require the Muslims to close the file of Islamic principles and jurisprudence, and interpret the Qur'an and the Sunnah with a hermeneutic and philosophical orientation in the general sense. These two trends will jointly lead to abortion of the project of political Islam and eradication of Islamist illusions, together with the criticism of the reform process, but they differ in their views of Sharia. The first trend (introducing morality to Sharia) sees the Sharia as the fabric of Islam over the course of 12 centuries, based on a value system. The Sharia for the owners of this trend is Islam. As for the second trend (transcending jurisprudence), it is possible to separate Sharia from Islam.

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The aim of this study is to find the real relationship between legislation and ethics in Islamic thought, based on jurisprudential heritage and Shiite and Sunni fundamentalism. The significance of the study is to disclose the existing issues in Sharia, and proposing a solution to this problem. The findings of the study reveal that merging the two trends will be the most appropriate solution for incorporating modernity in Islam. The current study uses a descriptive-analytical approach and benefits from modern sciences in the field of linguistics, sociology and anthropology, to explain different aspects of this relationship with a critical view.

Keywords: Islamic thought, Sharia, legislation, ethics, jurisprudence, modernity