Ancient Egyptian Society and The Philosophy of Law

Fatma Farag Abd el-Hay

Abstract

This paper is to cast a new light on the philosophy of ancient Egyptian law. In fact, ancient Egyptian law has not changed over the course of the centuries; however, the new authorities are exercising a new form of justice from a new approach or revive the old custom to support governance over time to become in form of law. Unfortunately, there is no code evidence in ancient Egypt but scholars are attempted to study Egyptian law from different points of views to gain a nature of Egyptian law. We can see an apply the philosophy of justice by the King on the earth release the spirit of the law from strict human nature, because the customs and traditions are played a good role to control Egypt form dangerous of chaos in other societies. While the progressing of Egyptian society toward urbanism, they faced the problem of control the law principle from tyranny of the influence power of religion from time to time. In addition to, understand why ancient Egyptian accepting the possibility of separating between powers which depend on who is control the law during this period! Finally, to see philosophy of apply justice effectively in ancient Egypt, it’s to show philosophy of daily life of Egyptian people toward a law in this time, not to investigate the noblemen life. The researcher has adopted the use of the analytical approach to the development aspects of the genesis of the law. We can conclude that the study of the history of ancient Egyptian law requires the study of philosophy of law and not waiting to discover the codes!

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ملخص
إن فكرة تطبيق القانون المصرى القديم لم تتغير على مر العصور، إلا أنه بتولي سلطة جديدة في البلاد يتم ممارسة شكل جديد من أشكال تطبيق العدالة سواء بتطبيق نهج جديد أو إحياء عادة قديمة تدعم أركان الحكم لتصبح مع مرور الوقت قوة القانون. على الرغم من غياب أكواد القانون المصري حتى الآن لكن العلماء يستطيعون دراسة القانون المصري القديم من خلال دراسة فلسفه المصري في استغلال القانون مع العلم أن العادات والتقاليد طغت على المجتمع المصري ولكنها استطاعت أن تحافظ على الهوية المصرية من فتره إلى أخرى. وهذا يبرر إمكانية قبول الفصل بين السلطات لأنها تعتمد على طبيعة الحكم القائم. ونرى بتطبيق فلسفه العدالة من قبل الملك على الأرض إخلاء روح القانون من الطبيعة البشرية الصارمة! فإن الهدف الرئيسي لهذا البحث هو استكشاف كيفي فهم القانون في مصر القديمة في ضوء دراسة فلسفة القانون المصري القديم، حيث نناقش كيف استطاع المصري القديم استبعاد أهمية القانون، بالإضافة إلى دراسة فكرة الفصل بين القضايا عن طريق دراسة فلسفة القانون المصري القديم في نشأة القانون بدلاً من الاعتماد على الأكواد التي لم يكشف الستار عنها بعد. وقد اعتمد الباحث على استخدم المنهج التحليلي لاستنباط مظاهر نشأة القانون. ونستطيع أن نستخلص أن دراسة تاريخ القانون المصرى القديم بحاجة إلى دراسة فلسفة القانون في خلق القانون وليس بالكشف عن الأكواد!
One of the most important areas of human behaviour is the creation and enforcement of law. In fact, no society can properly be understood or explained without a coherent conception of its law and legal doctrine, because study of law is a social science perspective it is required to see the function of the legal system within this society.

Wilson (1954:1) stated that:

"The attempt to understand another culture in its own terms always has a semantic difficulty in the inexactness of the translation of concepts from one culture to the other."  

Westbrook (2003:1) “Law has existed as long as organized human society. Its origins are lost in the mists of prehistory” During the agriculture and pastoralism which called “Pottery Manufacture” the data recorded often come from the 4th millennium. There is little documentary legal evidence from Dynasties 0-3 which give us impression about how barter system played an essential role to development the ancient societies such as ancient Egypt with the neighbors around it.

To know how ancient Egyptian people makes law beneficial to society? In fact, the ancient Egyptians created a progressive society and developed legal tradition still felt in the present. One of essential role of the king is represent status of Maat as offering to the great god that is refer to the desire of the king to apply the justice between people. So that the king present offering of Maat (\textit{Hnk mAat n nb M3t})

There is nothing more necessary and nothing more difficult than the task of discussion nature of law in ancient Egypt. James (1984:62) said:

"The precise definition of law in ancient Egypt is difficult to achieve because the evidence is both thin and scattered over many centuries."

Unfortunately, not a few documentary records exist which profess to give us information concerning the early phenomena of law. Egyptian law was imbued with custom, religion, and complex power hierarchies more than independent areas of law such as property, tort or contract.
Egyptian law is a body of rules of action which sometimes having binding legal force and is not only to apply legal code to show justice of king on the earth. The following chart briefly describes aspects of understand Egyptian law:

<table>
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<tr>
<th>Definitions of Law</th>
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<tr>
<td><strong>Ethics</strong></td>
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<td><strong>Political</strong></td>
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<td><strong>Social</strong></td>
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<td><strong>Legal</strong></td>
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*The Law of nature, the laws of society and the divine commands all belonged to the one category of what was right.*¹⁵

Table 1: Nature of Law from definitions of Egyptian Law

Concerning to if ancient people understood the distinction between criminal and civil cases or not many scholar accepting the possibility of separating, but they acknowledged the difficulty in separating criminal and civil.¹⁶ Lippert (2012:2) refers:

“The distinction between civil and criminal law, something that seems obvious to modern societies, is hard to transfer to ancient Egyptian practice; we expect crimes to be prosecuted by the authorities and punished in a way that shows not only the victim but society as a whole was injured by the criminal”¹⁷
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<table>
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<tr>
<th>Subdivision of Ancient Egyptian Law</th>
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| Administrative Law: The body of law (the laws of king) that to legislate a new decision to control the state and an area of law that you will gain from life of the king e.g. w0-nw. Horemheb legislations were typically marked with a civil rather than a religious nature.  

| Civil Law may be defined as that legal tradition which has its origin in Roman law, as codified as the corpus juris civilis of Justinian, and as subsequently developed mainly in Europe. |

| Criminal Law: the laws of a state who is dealing with criminal offenses and their punishment Such as P. Berlin SS86 |

Table 2: Subdivision of Ancient Egyptian Law

That is guide to ask what type of philosophy of justice in ancient Egypt was! Some considerable advance in the understanding of philosophy of criminal law in ancient Egypt have been made recently did not realize the distinguish between the civil and criminal law except type of procedure inside courts. So did you think it is useful to neglectful the study of philosophy of law.

New question are being asked, what was required to do justice effectively in ancient Egypt? We have very little indication of the punishments suffered by those found guilty of crime. The Contending of Horus and Seth (Chester Beatty papyrus I) is the best evidence to the image of dispute as (Allam, 2010, p.266) refers “the gods themselves had to appear before a court in order to resolve their dispute” which appear in case of Horus and Seth.

“Then the Ennead said: “Horus is (M?)right, and Seth is(?)wrong.”

What we encounter the criminal provisions of the ancient laws seem strange for us to mind, but was excessively harsh sometimes harsh, then was completely appropriate and very fair for civilization reached by those communities.
Although there is no difference in jurisdiction but Egyptian court has ability to separate between criminal and civil responsibility. Actually, it’s difficult to have all pictures about nature of law in ancient Egypt. And the survival of features of Egyptian law is rare. It is often said that Egyptian law fails to distinguish between criminal and civil law. The present study, however, finds not only consistent distinctions between civil and criminal law; it also finds that both contract and tort laws are well-established, separate categories in Egyptian jurisprudence.

Inspiration divine appear during the New Kingdom Westbrook (2003:35) define it “the oracle was a divinatory procedure, a means of consulting a god on a specific question—in principle, one that could be answered yes or no. It could thus be used in non-judicial contexts as well as trials. It involved interpreting the movements of an image of the god carried on a litter” which called “Oracle Domination” The ruling clerics dispute before them a divinely and illustrated by priesthood the data recorded often come from the 2nd millennium.
Conclusion:

Unfortunately, the data is not equally distributed throughout ancient Egypt to explore the possibility for idealism society. As we have seen, many barrier to understand the long-term performance of the nature of law. But we must also take into account how the Egyptian does see the law from different philosophy so that our understanding of Egyptian law is shall take from more indirect sources such as custom, letters, para-Juridique, and daily life.

We can conclude that the study of the history of ancient Egyptian law requires the study of philosophy of law and not waiting to discover the codes! Writing the philosophy of law has turned out to be a favorite place to gain knowledge about nature of ancient Egyptian law as Sir Henry Summner Maine (1822-1888) advised scholars from a long time:

“But next to a new History of Law, what we most require is a new Philosophy of law”
Footnotes:


4. J. Wilson, Authority and the Law in Ancient Egypt, JAOS Supplement 17, 1954, p. 1; G. P. F. van den Boorn, Wd’-ryt and Justice at the Gate, Journal of Near Eastern Studies, vol. 44, No. 1, 1985, p. 22. Available from http://www.jstor.org/stable/544367. Accession date: 12/01/2013 08:14; also Bourdieu attested “The law is the quintessential form of “active” discourse, able by its own operation to produce effects. It would not be excessive to say that it creates the social world, but only if we remember that it is this world which first creates the law. “It is important to ascertain the social condition—and the limits — of the law’s quasi-magical power… the schemes of perception and judgment which are at the origin of our construction of the social world are produced by collective historical labor, yet are based on the structure of this world themselves…. Our thought categories contribute to the production of the world, but only within the limits of their correspondence with preexisting structure. Symbolic acts of naming achieve their power of creative utterance to the extent, and only to the extent, that they propose principles of vision and division objectively adapted to the preexisting divisions of which they are the products.” For further: P. Bourdieu, The Force of Law: Toward a Sociology of the Juridical Field, The Hasting Law Journal, 1987, p. 839; Monica Marie Bonnity, Conflict Management in Ancient Egypt:
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Law as a Social Phenomenon, Diss. University of California Los Anglos 1997, p.18

5. Lorne Neudorf, Judicial Independence: The Judge as a Third party to the Dispute, Montreal 2009, p.21


11. Ferreira, 2004, p.V.

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13. Bontty, 1997, p.23; Law can be described as the structure of a social system based on the congruent generalization of normative behavioral expectations. For further: Bontty, 1997, p.60


16. B.Menu, Recherches sur l ‘histoire juridique, economique et social de l’anciennEgypte, IFAO, 122, pp.11 ff.; If there was any distinction in procedure, it was not between criminal and civil cases but between private dispute and cases involving vital interests of the state or the public, such as an offence against the king or the gods. For further: Westbrook, HANEL, vol.I, HdO 72 , Brill, 2003, p.31


19. Dominik Lengeling, Common Law and Civil Law differences, reciprocal influences and points of intersection, Toronto, 2008, p.5; K.Seth, Geschichte des Amtes im Alten Reich, ZAS, 28,1890, pp.43-49; The most important “civil” official in the sacred state of Egypt was the vizier, who at first had been selected from the king’s family, but by the fifth Dynasty might be unrelated to the king. For further: J.A.Wilson, Authority and Law in the Ancient Orient, JAOS, 17, 1954, p.3; By the early third millennium B.C., Egyptian society had become consolidated: a centralized state was achieved with pharaoh as its head; a highly developed administration was then created. For further: Schafik Allam, Law, The Egyptian World, edited by Toby Wilkinson, 2nd ed., New York, 2010, p.263; For role of the vizier during the Old Kingdom see: Pirenne, Histoire de Institutions et du droit prive de l’ ancienne egypte, T.II, Bruxelles 1934, pp.95-100
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24—Seth, K. (1890) Geschichte des Amtes im Alten Reich, ZÄS, 28.

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