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SOME ASPECTS OF THE INFLUENCE OF MORAL AND LEGAL VALUES ON THE FORMATION AND DEVELOPMENT OF THE POLITICAL-LEGAL SYSTEM

Ismayilov Kh.

*Dr. Sci. (Law), Professor of the Department
Theory and History of State and Law, Law Faculty,
Baku State University,*

ORCID ID: 0000-0002-0766-3670

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Abstract

The political and legal systems of any society, in their formation and development, reflect the process of tension, exploration, effort, and struggle of humanity's spiritual and physical forces. Relying primarily on the moral and ethical values created by humanity, political and legal systems are rooted in the interests, needs, and requirements of society's members and can achieve their socialization and a conscious attitude toward state and legal processes. Moral values, seeping from the depths of society, permeate all its other subsystems; they not only rise to the level of politics and law, but also rise above them as the highest of all existing universal human values. The article examines the problem of values in the moral and legal context, reveals the importance of moral values in the progress of society and draws attention to some aspects of their influence on the formation and development of the political and legal system.

Keywords: moral and spiritual values, political and legal system, moral norms, legal priorities, political and legal institutions, freedom, equality, justice, humanism, ethical code.

Every political and legal system, as well as political and legal culture, is formed on certain values. The analysis of values, ideology, and ideological foundations of law and politics contained in legal science and legislation is considered important in terms of clarifying the essence of the processes taking place today and determining new directions of development. Customs, formed in the early stages of society's development and aimed at regulating relationships between people, including between fellow tribesmen or representatives of different tribes, gradually evolved into an important system of rules and norms of behavior, reflecting social and legal requirements regarding people's behavior, their attitudes toward other people and toward society as a whole, as well as acceptable actions.

Moral norms formed within the framework of these requirements have a significant impact on the socio-political and legal life of society. At the same time, the existing moral norms and principles, normative and value-based ideas themselves are constantly being reformed in accordance with public opinion, the habits of members of society and their assessments of certain issues. Moreover, moments that took place in various historical periods and were capable of forming the basis of national progress are once again revived in memory and, reflected in people's behavior, lead to a fundamental shift in socio-political, moral and legal relations. All of this, taken together, determines the main directions of development of society as a whole and its natural activities [Ismayilov, 2016].

It should be noted that the principle of "everything not prohibited by law is permissible", which includes the subordination of all aspects of human relations to legal norms and became popular in the late 1980s and early 1990s, is still referred to today and is still treated the last democratic truth in force. Indeed, at first glance,

it clearly meets the requirements of a rule-of-law state, emphasizing the rule of law. However, in practice, such an approach leads to error, arbitrariness, and abuse. Because a rule-of-law state itself cannot ignore the moral and ethical aspects of people's lives, and it is precisely these moral postulates that underlie the legal regulations themselves. If current legislation is not sanctified by the principle of justice—a moral principle—then its enforcement will be problematic.

The belief that anything that should not be prosecuted and punished from a legal perspective is permissible is a widespread illusion that moral values do not exist at all. The price of this is the development of a disdainful attitude toward legislative acts based on "political expediency" or "personal" interests. Political and legal norms that deviate from moral values inherently lead to political and legal nihilism. In this regard, it can be said that in all human relations that develop in civilized societies, including political and legal relations, moral foundations, although invisible, exist and play a role. Moreover, they not only exist, but are periodically put forward during discussions of a particular legal norm or political decision.

Political and legal ideas cannot transcend moral imperatives and must always, to some extent, conform to and align with them. Both power and the state in their political and legal aspects receive justification and recognition from the point of view of the moral ideals prevailing in society; otherwise, they become illegitimate and intolerable. For example, the "right" to suicide and euthanasia will never be legitimate until it receives a detailed moral justification and justification. Likewise, the death penalty and the controversy surrounding it are connected with the difficulties of justifying it from the point of view of modern moral de-

mands. However, this form of punishment was positively perceived by society in the Middle Ages and was widely used in practice; people even regarded public executions as theatrical spectacles. In the modern era, as a result of a fundamental change in the cultural and civilizational situation, public demonstrations of executions, scenes of murder in real life, and their observation are assessed as a bad and unworthy act. Of course, the exception is viewing staged murder and execution scenes—in films and theatrical productions [Ismayilov, 2014; Ethical thought: modern research, 2009].

With the rise of culture and the development of civilization, we can also observe a significant shift in our current understanding of what is morally permissible. Changes in moral values occur as a result of individuals' interactions with social realities and are manifested in their behavior, ideals, principles, and goals. Since these values act as integral parts of people's thinking, we also observe an interdependence between ingrained values and subsequently acquired ones—that is, value concepts that have penetrated society through the reinterpretation of previously existing ones or under the influence of other cultures.

While it is not entirely clear to what extent this manifests itself in political and legal reality, it is certain that the internal connection present in virtually all commonly encountered and universally recognized political and legal systems will be strengthened by moral norms. This means that voluntary and free notions of what is proper and improper, valuable and worthless, formed before the relevant time, can exert a much greater influence on political and legal norms than they do today. For example, in the political life of our country, one can observe that some of those who have the right to participate in elections still treat this right with disdain. Some cite a lack of faith in the possibility of influencing public policy through elections, as well as the fact that a significant portion of elected officials seek to advance their own personal interests and gain privileges. Such views can be overcome through an increase in political and legal culture and the development of an organized civil society—a bearer of stable moral values—which will result in changes in the ideology and psychology of the public as a whole.

In our time, among the issues attracting attention as an object of research, one of the important places is occupied by the study of law, legal thinking, problems of lawmaking, and the moral foundations of the legal system. Rethinking the essence of law, building a regulatory framework on national and moral values, basing political and legal development on moral and ethical roots, and improving political and legal institutions are highly commendable and have enormous scientific and practical significance. As evidenced by the results of sociological surveys conducted in Azerbaijan, despite fundamental changes in the political, legal, social, and economic systems, legal and political issues in national legal consciousness remain closely linked to moral and ethical concerns. Values such as human rights and freedoms, individualism and others are perceived and interpreted not so much in rational-logical and practical aspects, but in a moral dimension.

In the theory and philosophy of law, the nature of moral values is in many cases associated with practical benefits, needs and interests, which is expressed in the reduction of the highest moral-value level to a lower one - psychological, sociological, rational, volitional, socio-economic and even physiological level. The belittlement and distortion of higher values leads to the fact that moral values lose their essence and cannot fulfill the function of a conceptual center that forms the political and legal worldview of society and especially of a particular individual. In this case, the meaning of an individual's existence in the political and legal space is based on such needs and interests as power over others, enrichment by any means possible, achieving success at any cost, boundless egoism, and so on. As a result, the struggle for survival takes center stage, rather than the realization and protection of human rights and freedoms or the building of sincere, harmonious relationships between society and the individual. To eliminate such phenomena that expose society to moral erosion, it is necessary to increase attention to the uplifting, ennobling role of moral and ethical values, to instill their absoluteness, and to constantly promote their undoubted importance in the formation and development of a perfect political and legal system that will lead to the consolidation and progress of society.

When comparing different historical periods, a clear discrepancy in understanding the content and nature of moral and legal values often emerges. Looking back at history, it can be said that the moral and ethical values that had been formed over centuries in the territory of Azerbaijan and in many cases found their expression in various legal acts were transformed during the period of Russian rule due to the systematic nature of the disgusting actions of government officials towards Azerbaijanis. The attitude towards power in that era was not as a goal and a means, but as a right or a privilege, as noted in the materials of that time, "power did not rely on any moral principles and did not act on the basis of any moral force, its representatives neglected freedom of conscience, personal freedom, property rights, instilled only those moral themes that were useful to themselves, but they themselves did not actually follow them" [Alexander II, 1995], - reveals the essence of the political and legal system that was formed in such conditions, which ultimately led to the erosion of moral values.

During the first democratic republic in Azerbaijan from 1918 to 1920, the promotion and protection of individual rights and freedoms, the establishment of social equality, justice, and human freedom throughout society, and the creation of democratic political and legal institutions were rooted in a commitment to moral and ethical ideals and their widespread promotion. This was evident, first and foremost, in the actions of the Republic's leaders themselves. One fact, revealed from archival materials and already well-known in our country, is that the head of the third and fourth cabinets of the Republic, while serving as prime minister, was experiencing financial difficulties and asked his father to send him a sum of money without encroaching on the budget at his disposal, which belonged to the state and the people. This fact testifies to the high level of

morality and ethics displayed by the authorities of that time. For them, the main moral regulator was a sense of responsibility and duty for their actions before other people, as well as before God. It is here that we can see the presence and development of moral components in the political and legal realm. The presence or absence of moral principles in this realm clearly reveals the boundary between politics and politicking.

During the Soviet era, in the 1920s, a spirit of irreconcilable moral relativism and the absence of any moral taboos were characteristic. For example, the thesis proclaimed by the great leader of the Bolsheviks was that if it were possible to deceive even the devil, then it was permissible to ally with the devil himself. Somewhat later, in the sphere of morality, the institution of ideology was formed, expressing coexistence on two fundamental levels – external and internal, incompatible with each other. One of these—the external level—was declarative, that is, in most cases, openly veiled in nature; the other—the internal (real) level—was intended for a limited circle of "insiders," "initiates." For example, while on the surface there was pompous talk of universal equality and the "unity of the party and the people," in reality, privileges of the nomenklatura were growing, bizarre phenomena such as nepotism, parochialism, and cronyism were taking root, and a class mentality was being instilled. In the first years after the collapse of the Soviet Union, in the first years of activity of the newly formed independent republics, a state of moral erosion was also observed, which again found its manifestation in the structure and essence of the political and legal system. As a result, despite the formal enshrinement of freedom and equality for the country's population in the 1990s, we see crimes against property, persons, life, and health, such as racketeering, robbery, theft, and the like, raging, and a large portion of the population suffered from lawlessness and the violation of moral values.

The fundamental political, economic, socio-cultural, and legal reforms implemented in Azerbaijan during the period of independence were aimed at developing the content and expanding the scope of individual and social freedom, and eliminating extreme forms of social injustice and inequality. The establishment of a state governed by the rule of law, the recognition of human rights and freedoms as the highest value, and the ideas of political, ideological, and religious pluralism, enshrined in the Constitution of the Republic of Azerbaijan, legally formalized the eternal universal values of freedom, justice, and equality. At the same time, in almost all monotheistic religious views, formal freedom and formal equality are recognized as values, but humanism, compassion, the obligation to mutual assistance, and human responsibility for those under one's protection, etc., are placed above them.

The values of freedom, justice, and equality, as fundamental principles, manifesting themselves in morality, acquire a moral and ethical character and simultaneously permeate the content and essence of political and legal norms. Various interpretations of freedom exist. For example, the English thinker Isaiah Berlin, who adheres to conservative-liberal views, identified two

aspects of the concept of "freedom" – negative and positive. In the negative sense, a subject is free to the extent that no one interferes with their actions. In a positive sense, a person can be considered free when he is his own master, and his life and decisions depend on himself, and not on any external forces [Berlin, 1969].

Understanding freedom as a high degree of personal maturity is fully consistent with moral principles. Indeed, individuals possessing high moral standards are inherently free and have no intention of violating the freedoms of others. Individuals who are politically and legally mature and socialized understand that everyone possesses freedom to the extent that other legal entities are free in their actions. Personal freedom is limited not only by the freedoms of others, but also by restrictions established by law, society, and the state (for example, Part II of Article 28 of the Constitution of the Republic of Azerbaijan).

Natural freedom, on the other hand, means the possession of rights without duties or obligations, that is, the free and unhindered action of an individual based on their conscience and sense of dignity, the ability to do whatever they wish. However, everyone knows that no one possesses natural freedom in society. This is because the laws on which such society is based contain certain restrictions and constraints. In this regard, as M. Speransky noted, in any society there is not complete freedom, but only a degree of freedom, that is, an excess of rights compared to obligations [Speransky, 2001]. From what has been said, it is clear that it is reasonable to accept freedom not as the ability to do whatever one wants, but rather as the highest level of a person's awareness of his own actions.

Through the mechanism of legal regulation, the problem of conflict and competition between individual freedoms is also eliminated. When establishing rules of conduct, it becomes necessary to incorporate the principle of equality into the practice of social life. Indeed, it is impossible to imagine law without equality. Even in the most imperfect state-legal formations, at least partial equality exists within the population strata, which is extremely important for ensuring the minimal effectiveness of legal systems. It should also be noted that issues of social justice and equality are traditionally considered painful problems for our society. The idea of equality between people stems from the religious idea of equality of all before God and was established in the form of the perception of justice as a universally recognized equal necessary measure of behavior.

Many thinkers believe that true freedom lies within the boundaries of equality, is conditioned by equality, and it is in this capacity that it functions as a principle of law. As for equality itself, it consists of equality before necessity and equal fulfillment of what is necessary [Solovyov, 1910-1914]. Modern research distinguishes two types of equality: equality in content and equality in terms of social value. Human rights and freedoms are usually interpreted as the equality of identical rights and freedoms (for example, having an equal right to education or health care). However, in law enforcement practice, equality is more often encountered in terms of social significance rather than substantive content. This is enshrined in legal norms governing

civil contracts, employment contracts and many other legal relationships [Filimonov, 2009].

In terms of the recognition or denial of equality of opportunity among their members, societies are divided into paternalistic and egalitarian types, each exhibiting a diversity of moral values. Thus, in paternalistic societies the spirit of collectivism is high, while in egalitarian societies, on the contrary, individualism is more noticeable. In the Eastern world, where paternalism is widespread, the role of the political leader in power and the father in the family is extremely important, and they assume all the care for those under their protection. In the Western world, where egalitarianism is ingrained, individualism occupies a greater place, and the institution of subjective law as an emanation of individual will is widespread. In the East, the death sentence is passed by a judge (as if a government official), expressing the position of the state; in most Western countries, decisions on severe punishments are made by jurors representing public opinion.

In paternalistic states, the inadmissibility of phenomena that can be considered negative from a moral point of view is reflected in laws based on the general opinion of the collective, whereas in egalitarian societies one can see that a number of moral shortcomings are perceived as a common occurrence, and sometimes even enshrined in legislation. However, in a paternalistic society, the "superior" decides everything for the "inferior" individual in socio-political terms, which leads to the widespread spread of conformism and infantilism. As a result, a weakening of political and economic initiative and activity, the emergence of economic depressions and crises of power become inevitable. As for Azerbaijan, it is difficult to classify our country in its pure form as either an Eastern or a Western society. The moral and ideological foundations proclaimed and in force in Azerbaijan indicate that our society has its own unique development path.

Since the 20th century, Azerbaijani society has combined important features of both Eastern and Western civilizations, reflecting universal human values alongside Islamic values in its everyday life, thought, and legal system. Consequently, the characteristic traits of the country's citizens include a desire for economic and political activity, attempts to influence policy, and, in some cases, a procrastination and passive political and legal behavior, as well as a desire to build their own businesses or to have no one interfere in family matters. At the same time, they demonstrate in their thoughts and actions the need for a strong and caring hand to constantly be over them, the need for a head of state who embodies the personality of a father at the state level.

The category of justice, acting as another moral value, extends to all spheres of public and private relations, including legal and political relations, law and politics. Even ancient Greek thinkers believed that justice serves to soften the severity of the law. Justice, acting in relation to the law as an ideal, goal, principle, does not have a mechanism for implementing its "demands." Unlike justice, the law itself has the means of implementation. The great Azerbaijani thinker Nasiruddin Tusi said: "By its essence, justice expresses the

desire for both objective reward and deserved punishment. There can be no one-sided approach here. Everything must occur in accordance with the logic of things. Honest and selfless work is the basis of justice ... It is necessary to strive to protect income, acquired wealth and to satisfy the needs of everyone in proportion to their contribution to the general abundance" [Khaja Nasiruddin Tusi, 2005]. In these thoughts of the thinker, we see a clear expression of the boundaries between justice and injustice. One cannot but agree with the following opinion of the modern researcher A.A. Huseinov: "Justice involves evaluating a person based on their actions, rewarding them for their merits, which requires at least two things: a standard (norm, model) for measuring actions and a person entrusted with this measurement. For this reason, justice is naturally identified with the rule of law and justice..." [Huseinov, 2008].

Being a value, justice is in many cases placed above law. In our consciousness, justice harmonizes with truth and fairness. Truth is not only the verity, but also an emotional state. In people's minds, law and justice have a value only when they reflect justice and truth. At the same time, it is necessary to distinguish between the fairness of law and the fairness of the application of law. Herbert Hart rightly noted that "the assertion that one of the essential elements of the concept of justice is the principle of deciding like cases alike is true. This is justice in the application of law, but not the justice of law. Thus, in the very concept of general norms as an essential feature of law, there is something that prevents us from considering it neutral from the point of view of, and without some necessary connection with, moral principles." Natural procedural justice thus consists of those principles of objectivity and impartiality in the application of law which implement only this aspect of law and which are created in order to ensure that the rules are applied only to cases corresponding to their content or, at least, to reduce the risk of inequality in this sense." [Hart, 1958].

No matter how "fair" the law and the rule of law may be, if their application is not based on objectivity and fairness, faith in justice is gradually lost. On the contrary, the fair application of even a less "fair" law leads to an increase in this faith and, ultimately, to the strengthening of moral and ethical values in the minds of people. In this regard, the loyalty of law enforcement officers, especially those working in the field of justice, the prosecutor's office, internal affairs, customs, taxation and other areas, to moral values has an indirect but important impact on the purification of society and the enhancement of the political and legal culture of its members.

The commitment of every civil servant to the rule of law, human rights, democratic principles, and high ethical standards of conduct is established by the Law of the Republic of Azerbaijan "On the Rules of Ethical Conduct of Civil Servants" dated May 31, 2007 [Law of the Republic of Azerbaijan, 2007]. Based on this law, the adopted codes and rules of ethical conduct for judges, lawyers, prosecutors, justice officials, employees of the internal affairs agencies, tax and customs authorities, and those working in other government agencies reflect the set of ethical principles and standards of activity in the relevant agencies. They regulate specific requirements of morality and decency, issues of professional ethics, and conduct outside of official duties, and

define their attitude toward professional activity [Collection of Codes of Ethical Conduct, 2016]. As noted in these regulations, those working in the aforementioned agencies must be guided in their activities by respect for human and civil rights and freedoms, legality, humanism, and other democratic principles, as well as high standards of ethical conduct. Proper performance of their legally imposed duties directly depends on high moral and professional qualities, dignity, respect in society, a culture of behavior in their free time, and, in general, on a commitment to generally accepted moral and ethical values.

It should also be noted that ethical codes even possess some advantages over legal codes. Because the legal code, by its very nature, requires a precise definition of the elements of prohibited acts, as well as the necessary rules of conduct. But here one peculiarity emerges, which is the impossibility of creating a complete list of prohibitions and regulations. The basis of a moral and ethical code is not, first of all, norms, but principles of law, which are easier to align with the actual practical activities of a particular official. On the other hand, the specific nature of certain administrative offenses, which are not entirely correct from a political perspective, is such that proving guilt is difficult, and without it, it is impossible to apply legal sanctions. It should also be noted that many actions, by their very nature, cannot be regulated by law, but are expressed through moral and ethical norms, and the impact of the latter is, in most cases, more effective than that of legal norms. This is because moral norms act as fundamental determinants of human social behavior. Law, however, regulates only a certain portion of human actions.

If morality expresses the maximum value completeness, then law contains the minimum and sufficient. In this regard, law (as well as politics) will always be consistent with moral values and, being consistent with them, will be evaluated through them. Moral values such as selflessness, kindness, honesty, freedom, necessity, responsibility, keeping promises, a sense of duty, morality, usefulness, fidelity, mercy, justice, equality, striving for perfection, and altruism express universal human values and have historically acted as factors determining the fundamental moral and ethical orientation of individuals in society. Therefore, morality, both as a system of norms and as a system of values, can be assessed as an important condition shaping the value foundations of law. Among the values listed above, there are those that constitute not only morality but also the axiological foundations of law, the state, and politics. Values such as justice, freedom, equality, and humanism, which have moral, political, and legal foundations, manifest themselves in the form of ideals, goals, norms, and principles. They represent unique forms of social and individual assimilation of values and underlie the unique fusion of moral values with social reality, resulting in the progress of the political and legal system.

Summarizing the above, we can come to the conclusion that moral, political and legal thinking are organically linked to each other, are interconnected and closely dependent on each other. Formed on the basis of legal thinking, political consciousness brings clarity to the moral interactions existing in society and the

state. On the other hand, at any stage of historical development, the comprehensive embodiment of social reality in the morality of people is more clearly reflected in the relationship between the individual and the state. The habits, knowledge, everyday norms, customs acquired by members of society over the centuries, and the experience resulting from them, clearly demonstrate the state of the political and legal system of the state in the corresponding period.

References:

1. Alexander II. (1995). *Memories. Diaries. Introduction*, compiled and annotated by V.G. Chernukhi. St. Petersburg: Pushkin Fund.
2. Berlin I. (1969). *Two concepts of Liberty. Four Essays on Liberty*. Oxford, England: Oxford University Press, pp. 118-172.
3. Collection of Codes of Ethical Conduct (2016); http://www.lawreform.az/upload/5_book.pdf.
4. Constitution of the Republic of Azerbaijan (with amendments and additions in 2002, 2009 and 2016). (2018). Baku: Law Publishing House.
5. Ethical thought: modern research. (2009). Progress-Tradition.
6. Filimonov V.D. (2009) Justice as a Principle of Law. *Journal of State and Law*. (9), pp. 5-13.
7. Hart, H.L.A. (1958). Positivism and the Separation of Law and Morals. *Harvard Law Review*. (71, 4), pp.593-629.
8. Huseinov A.A. (2008) *Great Moralists*. Moscow: Respublika.
9. Ihering R. (1891; 2006). *Law as a means to an end*.
10. Ismayilov Kh.J. (2016). On some theoretical aspects of the formation of the political and legal system. *Baku University News, socio-political sciences series*. (1), pp.5-16.
11. Ismayilov Kh.J. (2014). On the Formation of the Legal Culture of Azerbaijan. In the book: *Law of the Caucasian Civilization*. Rostov-on-Don - Nalchik: Kabardino-Balkarian University, pp. 207-243.
12. Kant I. (1999). *Foundations of the Metaphysics of Morals*. Moscow: Mysl.
13. Karabaeva K.D. (2017). On the Issue of the Modern Concept of Morality in the Context of the Implementation of the Concept of the Rule of Law. *Russian Journal of Legal Research*. 11(2), pp. 53-58.
14. Khaja Nasiruddin Tusi. (2005). *Akhlaqi-Nasiri*. Baku. Lider Publishing House. <https://anl.az/el/t/tsn-en.pdf>.
15. Law of the Republic of Azerbaijan (2007). On the Rules of Ethical Conduct of Civil Servants; <https://e-qanun.az/framework/13685>.
16. Matuzov N.I. (2003). *Actual Problems of the Theory of Law*.
17. Pozdnyakov E.A. (1995). *Politics and Morality*.
18. Speransky M.M. (2001). *Foundations of Russian Law. Jurisprudence*, (3), pp. 224-238.
19. Solovyov V.S. (1910-1914). *Collected Works*. In 10 volumes. (70). St. Petersburg: Prosveshchenie.
20. Universal Declaration of Human Rights (1948); https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.