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Relation of Law and Violence From a Foucauldian Perspective

Abstract

In this paper, the relation of law and violence is being addressed within the frame of the thoughts of Foucault. Thus, first it was examined what law and violence means, and then it was tried to reveal how Foucault approaches the subject. Foucault deals with the problem of law in the context of power relations. At this point, it is being observed that there is a connection among state, law and violence. In addition, it is also being observed that body is the object of violence and law functions as an interference to the living space of the individual. In this study, all these problems will be tried to be discussed.

Keywords

State, Law, Death, Violence, Life.

When we ask what law is, one of the provided responses is in the direction that it is a science. In line with that, law is expressed as a normative science laid out according to the norms that indicate the organization of individuals, society and state, their relations with each other, that are being duly issued by authorized bodies, that are supported by public authority and that indicate the addressee how it should be acted or not. On this view, it can be said that law observes common well being and common benefit in the relations of individual, society and state.

The word “hukuk” (law) in Turkish derives from the root of “hak” (right) in Arabic, and it is the plural of that word. In other words, it makes reference to rights as the plural of right. When we consider its lexical meaning, we are seeing that the word law is used as the whole of codes organizing the society and determining the sanction power of the state. In the framework of positive law, it is the whole of laws that are organizing the relations in a specific society at a specific time and the conformity to which is dependent upon the law enforcement of state authority, in other words to various sanctions.

With a clearer expression, it is possible to specify law as the whole of binding, general, abstract and continuous rules that is organizing the relationships of people who live in an organized society, that is formed in order to ensure the safety of individuals and protect the human rights, and that is supported by state power. But the feature that distinguishes law from customary observances, traditions and religions that are the rules organizing the society is existence of sanctions which are maintained by the government and which are based on law enforcement. Rules of law organize the human behaviors, and they are organized by the effect of standards of judgment, demands and expectations of the society. This organization is always made in a process of re-assessment.

In addition, sanction in the field of law is applied by the public authority. At this point, legal regulations are enforced in order to ensure observance of laws, punish the ones that don't comply with them and minimize the damages in case of disobedience. Sanctions intending to ensure and preserve the order of law are again enacted as anticipated by the order of law. The state is constructed on a legal basis. In this context, law may be handled by its various fields. There are various sanctions in various departments of law such as death, prison penalties and fines in penal law, preclusion from politics and closure of political parties in constitutional law, and penalties for tax evasion and smuggling in tax law.

On the other hand, when we consider what the concept of violence means, except defense or counter defense stemming from a basic drive for legitimate self-defence to protect one's existence, it seems proper to determine it, mostly among human and animals that live as a community, as a type of psychological and biological behavior and act towards damage to the other party in order to ensure intra group authority and deeming the existence of others as a factor of threat to suppress them. In this context, it is possible to refer to different forms of violence. Political violence that is among these designates the violence used by government or individuals in order to reach their political ambitions. In addition, terror that is considered as a concept relevant to violence is addressed as a political concept, and it is specified as political violence. In

case a nation is unable to involve in politics by valid norms as its legitimate defense right, it prefers the method of armed struggle as a form of political violence. But this method is named as terrorism in international law and among the states. On the other hand, in order speak of a real terror, it is required for the basic human rights to be given and to have an organization that still engages in violence despite that. This organization can also be the state. At this point, it can be spoken of the terror of state. Law is a field by means of which the government functions and flows through itself and sometimes by using violence. In this context, it is observed that law has a significant role in the functioning of the state.

Now, if law is enlivened by norms, legal regulations based on such norms, statutes and by laws, and if it is regulating our lives as sanctions organizing the public life, how will the interference of such regulations be? How and by whom will the limits of crime and penalty be determined?

Foucault, at the beginning of his book named *Birth of Prison*, describes in detail the penalty of a prisoner named Damiens. It is required for the prisoner to admit its offense before everyone. The torture used on the prisoner is depicted in detail (Foucault, 1992: 3). In here, while the ones watching the torture are enjoying it, the prisoner only prays to god. In this case that turns to a bloody show, the king shows his power to everyone through the violence used on the body of prisoner. “The body that is examined through torture is the point of implementation of crime and also the point where the truth is acquired” (Foucault, 1992: 52). According to Foucault legal torture is also to be understood as a political and liturgical/ritual framework. Torture is among the ceremonies by which power manifests itself. Abusing is fulfilling justice and making the power functional again. In this ritual execution, the power relation providing the statute with its power arises. According to Foucault, there exists two powers in this execution realized before public. One of these is struggle and the other is victory. In the referred ritual implementation, there exists a war between the criminal and the sovereign the outcome of which is decided in advance. The sovereign reveals its own power over those whom he reduced to impotence. (Foucault, 1992: 62). It is required for him to do that, otherwise he can't keep its power standing. The most important thing that attracts attention in here is the imbalance among forces. The powerful one has absolute dominance and infinite title on the body of the one that he degrades. Foucault specifies that the justice of the king shows itself as an armed justice, and says that the sword punishing the criminal is also the one destroying the enemies (Foucault, 1992: 61). In here, the thing being referred by sword is the king's justice and also his infinite power. And the executioner executing the penalty is not just the individual implementing the law, but also the individual deploying the power. He is the agent of violence applied to the prisoner.

On the other hand, it is observed that a new institution arises by the act of isolation, imprisoning. And this institution is the prison. The prevalence of a disciplinarian power in an environment where theories of penalty are discussed had triggered the birth of prisons (Bernauer, 2005: 233). In addition, prison –which is a modern institution for imprisonment- had rapidly developed, had been improved by various models, and imprisonment had become very extensive. Prison is very different from the cells and imprisonment points of Middle Age. Because while the prisoner is

staying at prisons and at other imprisonment points until execution of his penalty or until being discharged by payment of his ransom, the disciplining and adjustment of the prisoner is in subject at modern prisons. Foucault specifies that the prisons had appeared by the beginning of nineteenth century. In that period, a new type of knowledge and consequently a new form of power had sprung. Against an examination form such as power of state in justice which is organized in Middle Age, a completely different new information, a surveillance and research information being organized around norms through inspection of individuals along their lives is in subject. Foucault says that this is the basis of power (Foucault, 2005: 225). In addition, a detailed tyranny where the power doesn't hide and mask itself is seen at prisons.

According to Foucault, real and physical disciplines had given rise to the basis of formal and legal freedoms. In here, despite being considering as the ideal basis of contractual law and political power, it was giving rise to the technical method of panopticon style suppressing, and it was incessantly continuing to deeply penetrate into the legal structures of the society. Foucault said that "Age of Enlightenment" discovering freedoms had also discovered disciplines (Foucault, 2005: 279).

For Foucault, who addresses the relation of law, power and state by his own perspective, the reform made in penal law is a strategy prepared in order to make the punishing power more systematic, effective and permanent. The aim of interference of penalty is now not to reveal the truth of crime, but to create an obedient individual which obeys to the rules, order and authority surrounding it, and who internalizes that authority. Against the old power structure which was negative and limiting, as this new form of power is productive and intended to support life, Foucault names this new power techniques and mechanisms as bio-power. Thus, the implementation in the recent three centuries is being encountered as a strategy for obedience of the disciplinarian power that creates the individuals of modern age. And so understanding the concept of modern man requires understanding the microphysics of the power. For Foucault, human is the product of the functioning of that new form of power on the ones being punished, inspected, adjusted, crazies, children, patients and workers (Keskin, 1996: 119-21). On the other hand, as bio-power requires the body of capitalism to enter the production process in a controlled manner and requires the population to be made consistent with economic processes, it is an irrevocable factor in the development of capitalism.

For Foucault, who speaks of bio-power as a form of power, a consequence of the development of bio-power is the importance that the game of norm gains to the legal statute system's disadvantage. According to that, statute cannot remain unarmed, and its most suitable weapon is death; it responds to opponents by that absolute threat at least in the last phase. Statute is always considered along with holy justice. But a power that had undertaken the responsibility of life will always require regulatory and corrective mechanisms. In here, the one in subject is not bringing forward death in the field of dominance, but distributing life in the fields of value and usefulness. Foucault says that he wants to specify that statute increasingly functions in the form of a norm and that the functions of justice increasingly becomes integrated with medical, managerial etc instruments universe. According to that, a normalizing society is the historical end of a power technology that centers life (Foucault 1993: 147-8).

Foucault specifies that bourgeoisie had not left its imprisonment function, and that it had succeeded the same effects by other instruments. For instance, forms of more flexibly, cleverly inspecting and imprisoning the worker class such as making the workers indebted, installment sales, system of savings funds, retirement funds and provident funds, establishment worker sites were discovered (Foucault 2005: 139).

Foucault, who specifies that holy justice is the symbol of right to “life and death”, “killing or letting live”, says that the power has the “right to get” before everything. For him, a right to get being used on goods, bodies and time was in subject, that right was being emerging with the privilege of acquisition in order to abolish life. In here, a power tendency intended to produce, empower and organize instead of bending or eliminating is in subject (Foucault 1993: 140).

Foucault specifies that the thing giving the power to approach to body is undertaking of it the responsibility of life rather than threat by death. He alleges that when the pressures that the movements of life and processes of history resort to in order to connect with other are named as “bio-history”, it would be required to specify the fact that makes the life and life mechanisms enter in the field of open thoughts and transforming the power of knowing to a factor of the transformation of human life as bio-politics (Foucault 1993: 146-7). For Foucault, bio-power is the irrevocable element of the development of capitalism, because he thinks that capitalism arises by putting the bodies into production device in a controlled manner and organizing the population as per economic processes (Foucault 1993: 144).

Foucault deems the society of norm as a society type in which the power of statute is not going back, but being involved in a much general power. This society requires a much more different surveillance and control system. In here, an endless visibility, continuous classification of individuals, hierarchizing, qualification, forming the borders and self diagnosis is in subject. Norm becomes the criterion of separating the individuals to sections. On the other hand, when the forming society becomes a society of norm, medicine being the superior science of normal and pathologic will become the queen of sciences (Foucault 2003: 77-8). In addition, according to Foucault, the problem of power loses its importance when it is revealed only with the terms of legislation or state and with the terms of instruments of state. He alleges that power is complex, intense and widespread in a different manner than the whole of statutes or than the instruments of state (Foucault 2003: 98). According to him, the mechanism of power is much wider than simple legal instruments, and power is used with numerous tyranny procedures.

Consequently, we are seeing that law is a field where violence is used through norms and statutes. And the state that holds the legal regulations and operating law has the “right” to use violence. It is clear that at a place where crime and penalty is determined through statutes, where social life is regulated by rules and where interpersonal relations are disciplined, violence enlivens as a part of life. Power of state, in other words the dominating power holding the state by all its institutions, is able to dispose individuals and personal life by using the law as an instrument. In this manner, the power regulates the life of the individuals through institutions and legal procedures. In this context, law finds existence as a field where violence flows along with it.

Foucaultcu Bir Perspektiften Hukuk ve Şiddet İlişkisi

Öz

Bu yazıda, hukuk ve şiddet ilişkisi Foucault'nun düşünceleri çerçevesinde ele alınmaktadır. Bu nedenle öncelikle hukuk ile şiddetin ne anlama geldikleri araştırılmış, sonra da Foucault'nun bu konuyu nasıl ele aldığı ortaya konmaya çalışılmıştır. Foucault hukuk sorununu iktidar ilişkileri bağlamında ele almaktadır. Bu noktada devlet, hukuk ve şiddet arasında bir bağ olduğu görülmektedir. Bununla birlikte bedenın şiddetin nesnesi olduğu ve hukukun bireyin yaşam alanına bir müdahale işlevi gördüğü de görülmektedir. Bu çalışmada bütün bu sorunlar tartışılmaya çalışılacaktır.

Hukuk, iktidar ve devlet ilişkisini kendine özgü bir bakışla ele alan Foucault için ceza hukukunda yapılan reform, cezalandıran iktidarı daha sistematik, daha etkili, daha kalıcı hale getirmek için hazırlanmış bir stratejidir. Cezanın müdahale amacı, artık suçun hakikatini ortaya çıkarmak değil, itaatkâr, kurallara, düzene ve kendini kuşatan otoriteye boyun eğmiş ve bu otoriteyi içselleştirmiş bir birey yaratmaktır. Olumsuz ve sınırlayıcı olan eski iktidar biçimlerinin tersine, bu yeni iktidar biçimi olumlu, üretken ve yaşamın desteklenmesine yönelik olduğu için, Foucault buradaki yeni iktidar teknikleri ve mekanizmalarına bio-iktidar adını vermektedir. Böylece, son üç yüzyıl içindeki uygulama modern çağın bireyini üreten bu disiplinci iktidarın itaat ettirme biçimi olarak karşımıza çıkar Bu nedenle modern insan kavramını anlamak, iktidarın mikrofizliğini anlamayı gerektirir. Foucault için insan, bu yeni iktidar biçiminin cezalandırılanlar, denetlenenler, islah edilenler, deliler, çocuklar, hastalar, işçiler üzerindeki işleyişinin bir ürünüden ibarettir. Öte yandan bio-iktidar, kapitalizmin bedenın üretim sürecine denetimli bir şekilde girmesini ve nüfusun ekonomik süreçlere uygun kılınmasını gerektirdiği için, kapitalizmin gelişmesinde vazgeçilmez bir unsurdur.

Hukukun normlar ve yasalar aracılığıyla şiddetin gerçekleştirildiği bir alan olduğu görülmektedir. Şiddet uygulama "hakkına" da hukuksal düzenlemeleri elinde bulunduran ve hukuku işleten devlet sahiptir. Suç ve ceza yasalar aracılığıyla belirlendiği, toplumsal yaşamın kurallarla düzenlendiği ve kişiler arası ilişkilerin disipline edildiği yerde şiddetin hayatın bir parçası olarak hayat bulduğu açıktır. Devlet erki, yani bütün kurum ve kuruluşlarıyla devleti elinde bulunduran egemen güç, hukuku bir araç olarak kullanarak birey ve bireysel yaşam üzerinde "tasarruf"ta bulunabilmektedir. Bu şekilde iktidar kurumlar ve yasal prosedürler aracılığıyla bireyin yaşamını düzenler. Bu bağlamda hukuk, şiddetin onunla aktığı bir alan olarak varlık bulmaktadır.

Anahtar Kelimeler

Devlet, Hukuk, Ölüm, Şiddet, Yaşam.

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