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SCHWERPUNKT

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ARBEITSVORHABEN
Islamische Hermeneutik

Seit langer Zeit beschäftigt mich das Problem, wie die muslimischen Gelehrten unserer Zeit den Islam interpretieren könnten, damit er auf einer intellektuell akzeptablen hermeneutischen Theorie basiert und dennoch nicht von den Grundlagen des islamischen Glaubens abweicht. Einige Schritte in diese Richtung sind bereits unternommen worden, und ich hoffe, dass ich während meines Aufenthalts am Wissenschaftskolleg zu Berlin dieses Projekt weiterentwickeln kann.

Lektüreempfehlung

Schabestari, M. Mojtahed. Hermeneutik, der Koran und die prophetische Überlieferung.

-. Glaube und Freiheit.

-. Kritik an der offiziellen Interpretation des Koran im Iran.

KOLLOQUIUM, 04.11.2003
Islam und Demokratie

I know that "Islam and Democracy" is a wide-ranging and controversial subject. There are many Muslim and non-Muslim scholars and politicians who believe that Islam and democracy are irreconcilable. But there are also some scholars and politicians who see them as potentially compatible. Within this second group there are those who assert that the essential features and values of democracy can be largely found in Islamic texts and traditions. As a scholar, I find this latter opinion unsubstantiated; however, I do believe that with regard to a central concept in Islamic jurisprudence, namely the concept of "law," one may conclude that today's Muslims can indeed reconcile Islam and democracy. I am further of the opinion that the nature of law in Islam, seen historically and from a jurisprudential standpoint, can be understood as secular@. This rational understanding is firmly anchored in Islam and can, I believe, create for Muslims the possibility of building democracy while yet retaining their traditions.

To back this assertion, I must offer some explanation as to the nature of law in Islam. Many have claimed that Islamic legal thinking has been historically preoccupied with law solely as the expression of God's commandments and prohibitions; that it belongs to God alone to determine the nature of law and that humans have no right to subject it to rational analysis and then act on it in light of this analysis. The nature of law is defined by God-this is an assertion made frequently by scholars in general and even scholars of Islam, and in my opinion it is wrong. Islamic jurisprudence shows us that two differing conceptions of law have vied with one another throughout the history of Islam: a conception of law as emanating from the reality of human life and through tradition, and a conception of

law as duty prescribed by God. These varying interpretations belie any notion that Islamic legal thinking has always been homogeneous and solely defined by God. In the Koran, the Prophetic tradition, and the history of Islam there are many indications that Islamic legal thinking has oscillated between a definition of law as a human matter and as an exclusively divine sphere.

The legal thinking of Muslims in the various historical periods of Islam has varied. Legal thinking during the time of the Prophet and his four successors (caliphs) was different from legal thinking after the third century.@@ At the beginning of the twentieth century A.D. in many Islamic countries there emerged a particular kind of legal thinking that was occasioned by the constitutional movements which arose through the offices of great scholars and showed marked differences to traditional ways of viewing the law. In our time, we are faced with three new conceptions of the law as represented by 1) those who derive a legal ruling from the five "main goals" of the Sharia; 2) those who base everything on the dialogue between humans and the scripture; and 3) those who propose a modern hermeneutics of the scripture. Although in all of these religion itself plays a major role, there also exist very real differences which cannot be ignored.

Let me explain what I mean. Inferring from the Koran's repeated emphasis on justice, this must have played a central role in the development of legal thinking during the time of the Prophet. The Koran's notion of justice as applied to human relations is a worldly idea based on Reason, a secular legal concept that implies not only moral conduct toward others but is also concerned with maintaining social order. As with many other terms in the Koran-e.g. power, or monarchy, or schura (advice) or bay'at (recognition of a person's authority through a binding oath of loyalty) as well as marriage, divorce, and contracts such as bills of sale-the notion of justice embodies a completely secular legal concept that even in the Koran has no specific religious sense or meaning behind it. Muslims understood these terms as they were originally coined before the advent of Mohammed. For in the Koran, the world is viewed as acceptable to God; not as a condemned world that can only be redeemed through revelation. Human life as well as the world's various cultures and civilizations are a sign of God's power and His design. The Prophet did not come in order to change the world but to tell people to observe ethical principles for the sake of their human happiness and to not play God themselves. That was the message of the Prophet, and the Koran says that all prophets before Mohammed duly pursued this goal.

Predicated on this basic attitude of the Koran, therefore, all concepts concerned with the ordering of human society, such as justice and injustice, have a completely secular sense.

There is a well-known saying of the Prophet that no one should harm others through their actions. Scholars have interpreted the word "harm" as a secular legal term, and Islamic jurisprudence has constructed from it a juridical principle that over the centuries has become a frame of reference for many legal rulings. Regarding the post-Prophet period, we also find further historical indicators that the idea of justice was understood not in any moral-religious sense but rather in a narrow secular-legal one. The acrimonious conflicts between the followers of Ali (fourth caliph) and those of Uthman (third caliph) pivoted on the issue of social justice. Abu Zarr, the famous follower and close affiliate of Ali, protested against Mu'awiya, the first ruler of the Umayyad dynasty, under whom social injustice and poverty were rampant (although some of Mu'awiya's friends and relations became very wealthy). Abu Zarr's protest was a clear fight for social justice in the secular sense understood by Muslims at the time. The idea of justice later played a decisive role in the origin of a certain legal concept, namely the Arab notion of haqq an-nas (human law) and haqq Allah (divine law). Thus did Islamic jurisprudence divide law, or haqq (in its moral sense, not its juridical one) into two parts.

Human law of course did not simply mean what we today understand as human rights. When Muslim theologians began to formulate an Islamic theology in the second century, the idea of justice in a human and secular sense played a major role. These theologians-later called mu'tazilites-established a theological principle which asserted that human actions were to be judged good or bad based on Reason and not based on divine commandments or proscriptions. It is the rational judgment of all humans that dictates what we should or should not do. The mu'tazilites thought that all God's commandments were a religious support for this Reason-based morality and ethics. In the fourth and fifth centuries there were other theologians-later known as ash'arites-who accused the mu'tazilites of having transformed the Islamic religion into a philosophy through their overemphasis on Reason. They asserted that action could indeed be judged good or bad based on God's commandments and prohibitions; justice was good only because God had commanded humans to be just. Unfortunately, over time this kind of thinking led frequently to Muslims' rejecting the notion of justice in a secular, human and rational sense. After the third century, this non-Reason-based thinking was used by the Abbasid caliphs as the foundation of their religious reign. These rulers not only requisitioned jurists for their administrations so as to make important legal decisions, but they were also responsible for notions of justice and law shedding their secular and rational meaning in the larger part of the Islamic world.

Here I would like to cite the well-known Islamic scholar Bergstraesser, who wrote much on the subject of Islamic jurisprudence and authored Grundzüge des islamischen Rechts. Bergstraesser also shared the opinion that this divergent definition of law was helped along by political motives during a certain period of Islamic history: "In their

legal rulings the first caliphs certainly had no notion of adhering to 'Islamic' law. The provisions of the Koran and other express principles of the Prophet were naturally respected and the new legal rulings were also in his spirit. But overwhelmingly [Muslims], like Mohammed himself, unhesitatingly followed the laws at home and in the newly conquered provinces insofar as religious and moral principles allowed." And he adds: "As always, law remained aloof from religion, it was religiously neutral. A continuation of this situation could have led to a law that was partly influenced by teachings on religious duty but one largely evolving from practical experience, useful in practice, and able to be put into practice. This development was derailed by political conditions prevailing at the time."

Hence the law's human meaning was sloughed off and throughout the history of Islam many continued to assert that the law was only that which was defined by God as law. In order to trace the secular and rational meaning of justice and law in the pre-Abbasid period and in those regions free of Abbasid influence, we must first examine Islamic civil law, from which jurists derived several principles. In order to find traces of the historical facts that I have outlined above, one should go to those laws that Muslim legal experts have assembled under the title General Principles of Islamic Jurisprudence (al-qawa'id al-fiqhiyya). There are several books on the General Principles by Islamic jurists. Many of these principles belonged to Islam's ritual religious duties, but they were mostly part of civil law. This civil law had nothing to do with religious belief but was understood by Muslims precisely in the sense that non-Muslims understood it.

I would also like to speak here about those Muslim jurists who follow the five main principles of the Sharia in deriving their legal rulings. They believe that all prescriptions of the Koran and the prophets were intended to protect and preserve the five most important things: human life, human Reason, the institution of the family, possessions, and religion. In their opinion, every legal ruling in Islam (fatwa) should take into account the extent to which this verdict is in accord with these five principles.

One can clearly observe in such legal rulings how human life was the yardstick for understanding religious prescriptions and a vital source of law in Islamic jurisprudence. This notion was first voiced in the fifth and sixth centuries by two scholars named Schatebi and Ghazzali, and in our time has been put forward by various scholars as a method for reforming the Islamic legal system.

I would like here to briefly look at two previously mentioned events that were important for the legal thinking of Muslims. When the constitutional movement began in Iran almost one hundred years ago, the great Shiite savants in Iraq and Iran were intellectually split into two groups. The group under the leadership of Sheik Fazlollah Nuri (a great scholar) believed that a constitutional order was a human invention that could not be reconciled with Islam, and therefore had to be avoided; but the second group under the leadership of Muhamad Hossain Naini (who wrote a book on the subject) believed that this order was indeed compatible with Islam. A closer examination of the negative disposition of Sheik Nuri and the positive arguments of Naini reveals that these two scholars had two differing interpretations of the nature of law in Islam. Nuri believed that the form and meaning of the law could only be revealed by God, whereas Naini believed that humans have a right to choose their social order so long as there is no clear contradiction of religious commandments and strictures.

Finally, I would like to address the notion of "dialogue" in the legal thinking of Shiite Islam. The founder of this movement was the Sheik Ansari, who lived in present-day Iraq and was a specialist and theoretician in the area of Islamic jurisprudence and legal rulings. His efforts to give a scientific basis to jurisprudential methods succeeded in establishing certain guidelines. He attempted to describe under what conditions God can speak to humans and oblige them to do His will. The principle he laid down was that humans are only obligated to God when they have attained an unambiguous understanding of His commandments or prohibitions. Establishment of this principle generated many epistemological questions regarding legal rulings. In his famous book Methodological Principles of Islamic Jurisprudence (fara'id al-usul), Sheik Ansari went into detailed discussion of these problems, finally arriving at the conclusion that humans are capable of achieving a fundamental and unequivocal understanding of at least some of God's commandments and proscriptions. He felt that this understanding should serve as basis for the entire Islamic legal system. Sheik Ansari clearly showed that humans are important and that the nature of law is closely tied up with their ability to understand it; and that God can place no obligations on humans when human understanding can draw no indubitable conclusions regarding what precisely those obligations might entail.

In my opinion, it is precisely here that a certain legal thinking can emerge that seeks to pursue the nature of law on a hermeneutical basis. I see this as a dialogue between God and the scripture and humans-a project, unfortunately, that has not yet been fully realized.

Ladies and gentlemen, in summation permit me to state that Muslims today have the theoretical possibility of reforming their legal system and establishing democratic states based on the secularity and humanity of law in the Islamic tradition. Muslims have the possibility of regarding the present Islamic legal system as a historical legacy open to criticism and reform. They can interpret their scriptures in such a way that Islam's divine revelation may be separated from their historical form. Through such a hermeneutical approach, they will find room enough in their world for democracy and human rights.

@ The term 'secular' is used in the sense of mundane or inner-worldly and not as the opposite of sacred.

@@ All dates are according to the Islamic calendar unless otherwise specified.

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