

Diceyan Rule of Law: A Swaddled Notion of Islamic Legacy

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1.1 INTRODUCTION

John Locke said:

The end of the law is, not to abolish or restrain, but to preserve and enlarge freedom. For, in all the states, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law: and is not, as we are told, a liberty for every man to do what he lists. (For who could be free when every other man's humour might domineer over him?) But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own.(1)

The phrase 'rule of law' is derived from the French expression *la principe de legalite* (the principle of legality). It demands that a government must be structured on the principles of law so as to mitigate arbitrary powers.(2) In some ways, the concept of rule of law dates back to the old concept delivered by Coke and Dicey. There is a perception that Sir Edward Coke was the initiator of this notion of the rule of law in England. Coke said that the authority of king is not supreme but subject to God and law and in this way he declared the authority of law supreme as compared to executive authority.(3)

Locke has its own assessment in reference with Islamic and Biblical discourses as Matar said that:

Although the passage shows that Locke did not equate Qur'anic and Biblical revelations, and indeed favoured the latter, it demonstrates his willingness to treat Muslims and Christians as sincere seekers of God. It also shows his comparative approach to religious believers—he approached the Muslim community with the same critical judgement he would the Christian. Throughout his writing career, Locke retained the 17th century prejudice against the Islamic creed but, significantly, he discarded the prejudice against Muslims. He drew a sharp line between theology and believers in order to mark the crucial divide between persecution and toleration. And essential to toleration was the recognition that all men, Muslims and Christians

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- 31- The Holy Qur'an, 4: 97.
- 32- Bukhari, Muhammad bin Ismail, *Sahih Bukhari*, Jihad, Chapter 52, and Hadith No. 311.
- 33- Ahmad, Abu Dawood and Darimi, Hadith No. 228.
- 34- Referring to Sura Quraish of the Holy Qur'an; Sura No. 106.
- 35- Salih bin Abdul Aziz al-Shaikh, Human Rights in Islam - (حقوق الإنسان في الإسلام) , Riyadh: Ministry of Islamic Affairs, Endowments, Dawah and Guidance, 1427 H.
- 36- ECWA (Evangelical Church Winning All) (1978a) crudely estimates the Arab brain drain from the Middle East at 4,000 professionals annually.
- 37- Shaw, R. Paul. (1983). *Mobilizing Human Resources in the Arab World*, London: Kegan Paul International. P. 172.
- 38- al-Sharq al-Awsat newspaper, number 1/1/1989.
- 39- al-Sharq al-Awsat newspaper, number 1/1/1999, reported by Dr. Ali Hubaish, Head of Scientific Research Academy, Egypt.
- 40- A study by College of Economics and Political Sciences, University of Cairo, published in al-Nadwa newspaper of Saudi Arabia, number 25/2/1993.
- 41- Study prepared by Maysa Salem al-Shami, UAE University, Scientific Culture and Prosperity of Arab Future- Statistics of the Scientific Research Centers, published in the Series of Arab Book, January 2007, Number 67.
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- 49- Ibid.
- 50- Bayati, Yasin Khudair, Dr. متى يتوقف نزيف هجرة العقول العربية (*When the Arab brain drain will stop*,) in Al-'Arab, (first daily Arabic newspaper, founded in London in 1977),, Saturday, 7th December, 2013, Issue: 9420, page: 8, Alarab.co.uk
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- 2- Ibid
- 3- Dr. Faidi Omar Mahmoud, President of ARABMED in Europe, December 30, 2012.
- 4- This was stated by the Chairman Denmark Pakistan Chamber of Commerce (DPCC) and Research Economist Abid Ali Abid while delivering a lecture 'the impact of brain drain on Pakistan's economy' to the members of Lahore Economic Journalist Association (LEJA). Full article may be read in: Daily Times, Sunday, July 05, 2009 under 'Pakistan the worst-hit country by brain drain' at: <http://www.dailytimes.com.pk/default.asp?date=12/15/2013 2:04:42 PM>
- 5- Ibid.
- 6 - Amna Nawaz, (2013). *Future Shock: Millennials in Crisis*. Islamabad: NBC News Correspondent, 2 September, 2013.
- 7 Ibid
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- 29- Ahmad, Musnad, Vol. Page 199.
- 30- Bukhari, Muhammad bin Ismail, *SahihBukhari*, Revelation, Chapter 1, Hadith No.1

- Designing visiting programs for the second generation scientists to visit their fatherland and motherland and its institutions, as some of them possess high level of capabilities and also enjoy good reputation in the western societies.
- The embassies of the Islamic countries in the west should be instructed to take care of the emigrants and help them interact with their homeland.
- Legally, the Islamic countries should make some new laws to attract back the cream of the crop that has migrated overseas. (50)
- Quality education to be provided in our educational institutions:

It may include qualified teachers, adequate facilities, proper funding, comprehensive curriculums, affordable tuition fees and the availability of scholarships, research facilities and proper educational support. All of these factors are dependent to a certain degree on budget. For accessible quality education, a serious financial commitment by the government is necessary. One of the important measures to be taken at the national level is the reorientation of educational system to discourage the migration of qualified intellectuals.(51)

Scholarships/economic support program should be initiated for the poor talented students, without compromising their self-respect.

- Manpower Planning should be emphasized upon:

As mentioned in UNESCO 127th executive conference in developing countries, planning in education sector has to be in conformity with the social strategy, economic needs, structure of qualifications and skills. Manpower planning has not been a great success in a number of Islamic countries affected by brain drain.

- Educational Programs should be conducted.

Educational opportunities and qualitative improvement of the training can reduce the pressure for studies abroad. Bilateral foreign aid programs and fellowships by international organizations should be utilized fully for such trainings.

- Developmental opportunities along with fair merit system to be adopted.
- Teachers' Role should be played again.

Teachers may assist students in a variety of information about themselves, their values, skills and interests. They may guide them about the occupations and careers they may opt while going abroad for education.

- To establish a center for brain management at the level of Islamic world on the basis of integrating human capital into other Muslim countries that face its shortness. This center should also manage all affairs of the emigrating scientists.(48)

In the year 2003 UNESCO cooperated with Hewlett Packard to develop several projects by using the latest technology for "brain gain" in favor of those countries that were specially effected from the brain drain of academics and scientists.(49)

- To obtain a comprehensive data of the Muslim brains that drained out, with the objective of knowing their numbers, places of living, fields of specializations, commitments and work environments. In this way, the Islamic countries may specify the specializations they need and chose from the emigrants that have the ability to work with the projects needed in the Islamic countries.
- Arrange some programs on national level to give consultations to those who are about to leave their homeland for higher studies to inculcate in their hearts and minds the importance of coming back to serve their own country.
- The Islamic governments should establish societies and organizations to give incentives to the emigrants to come back, remove all hurdles that may come in the way of connecting them with their homelands as some of them do not feel at home even in their own countries because after coming to their homeland, after long years, they may find that many things including people, places, values and laws have changed.
- There could be a generation gap and the returnee's own neighbors may not recognize him. Sometimes the emigrant brings back huge amount of money to invest in a business or project but he finds many hurdles in his way as compared to where he was.
- The universities in the Islamic countries should work hard in networking with the western universities where our best brains have been studying or doing research work. They should be in contact and if any one of them excels in any field, he/she should be awarded by the universities in their home countries also. Moreover, these emigrants should be invited to the conferences organized by our universities and their help should be sought in either technology transfer or participation in development projects.
- The salary system offered to the scientists coming back to their homelands should be reconsidered. Moreover, they should be paid extra on producing research papers.

1978) extra pulls from home increase the certainty and speed of return. These pulls are:

1. Sponsored students are more likely to return, particularly if the money comes from home.
2. Students on scholarships from the host country are more likely to return than the privately supported.
3. Guarantees of a job are associated with higher return.
4. Communication with employers at home increase the chances to return.
5. Official programs from the countries of origin, publicizing openings and urging the migrants to return are very effective.
6. Persons receiving more letters and publications from home are more likely to return.
7. Marrying a countryman – particularly before departure abroad – is associated with return. The most influential advisor is the spouse. So their advice is more likely to be followed in coming back home.
8. Members of national clubs are more likely to return.
9. Friendship with compatriots is associated with return, while many persons with friends from the host country prefer to emigrate.
10. In summary, persons with the strongest attachments to home are most likely to return.(47)

Questions asked by an emigrant to him/herself:

When a person leaves his family, friends and country, he certainly hopes and dreams to come back to his homeland, but when he reaches there he keeps on thinking over the following questions:

1. When is the appropriate time to go back home? Immediately after the completion of study and specialization or I should spend few more years to work and get experience?
2. Is going back home secures for me and my family our financial needs and for how long?
3. What is the price that I will pay by leaving the luxurious life style of the west and going back home?
4. It is true that I miss my homeland but I am not sure whether my homeland misses me the same way.
5. How and what I may contribute if I go back to my country?
6. Will the conditions and environments of work in my country suit me?
7. Is it my responsibility to go back home and work there?

Steps that should be taken by the Islamic governments to limit brain drain:

Following suggestions could be given to the Islamic governments to limit brain drain:

- The time period of their performance should be limited (two weeks to three months) to exchange the expertise earned abroad in the fields of research, academia and public or private establishments.
- The invitation of the gifted personnel should start from the government level then the private academic institutions, research centers, NGOs and companies from the private sector could also come forward.
- The expenses of inviting the native volunteers as consultants will certainly be a lot cheaper than inviting the experts from international market, besides its being on continuous basis.
- The natural love for the motherland in the hearts of these emigrants will help in succeeding the development projects as they would be contributing in these projects willingly and sincerely.(46)

Guiding the migrating minds:

To achieve the benefits of brain drain and avoid its negative impacts, some guiding procedures could be adopted which are summarized as under:

1. It is incumbent that the spirit of loyalty to the Islamic Ummah should be inculcated among those who migrate. They should stay in touch with the Muslim Ummah, particularly the youth among them who go abroad for study, so that they should not import the western culture and thoughts with them on their way back.
2. Acquire the accurate statistics of all the brain drained from the Muslim world, classify them according to their geographical existence, their specialties, academic qualifications, job places, social values and nationality. This may be done by an organization having a worldwide vision, financial capability and expert human cadre who may be able to use the latest communication technology to reach this goal.
3. Advise the emigrants to stay in touch with the Islamic Center close to his/her area. This will save him/her from being melted in the western culture.
4. Advise the emigrants that while their stay abroad they should keep on thinking about the solutions for the above mentioned reasons that cause brain drain.
5. Advise the emigrants that while their stay abroad they should keep their eyes open and look for talented intellectuals belonging to their homeland and persuade them to go back.

If a student or professional working abroad is obligated to return or frequently communicates with persons at home, he is much more likely to go back. But if these pulls are weak or if he develops new connections with foreign countries, his chances of emigrating increase. According to (Glaser,

the Islamic Ummah, particularly in the applied and theoretical fields, i.e. political, economic and social etc.

f. Foreign exchange earned by the homeland.

Reasons for migrants' long stay in the overseas:

- Getting used to the western life style and means besides having the appropriate scientific environment in the developed countries.
- Getting married in the overseas with native women and having children from them puts an emigrant in a practically difficult situation to leave his wife and children there as majority of these ladies and their children also do not want to live in his homeland. Moreover, there are many laws that create hurdles in front of a person who decides to come back to his country, for example some Muslim countries do not allow to employ those who have foreign wives or dual nationality to occupy sensitive and higher positions in the Muslim countries, hence he may not be able to provide the same luxuries to his family that he used to provide before. With the passage of time the idea of going back home dies in the heart of the emigrant.
- Non-existence of their specialty according to their qualification in the native countries of the emigrants, not to speak of the problem of not appreciating the science and the scientists in some Muslim countries.

Impact of the brain drain over the future of economic, social and educational development of the Muslim countries:

- Wastage of efforts and scientifically productive energies that are drained to the western countries while the development in Muslim countries needs qualifications in the fields of economics, education, health, planning, scientific research and technology.
- Loss of Muslim human and financial capital, spent on educating and training the competent cadre, who migrated to the west and were received by the developed countries without spending anything.
- Weakness and deterioration of the scientific research production in the Muslim countries as compared to the scientific research of the emigrants in the western countries.

Suggested Mechanism of involving the emigrants in the development of their homelands:

The efficiency of the gifted emigrants to serve in their homeland should be based on the spirit of volunteerism, honorarium and appreciation. For the mechanism of involving the emigrants in the development of their homelands, following suggestions could be given:

- f. The Arab world contributes 23% of engineers from the total number of engineers who migrate from developing countries to the west.
 - i. A great financial loss caused by the brain drain. Egypt alone bears the loss of \$50 billion because of the migration of its intellectual minds.
 - ii. Western attempts to attract the scientists and political personalities from the Muslim world for their strategic, political or military interests and sometimes using them against their own nations directly or indirectly. Most of the great projects in the Muslim countries that are pending for decades could be related to this, e.g. Kala Bagh Dam in Pakistan.
 - iii. Getting nationality of the western countries, getting married there and living there for decades without interaction with the native homeland, its belief, ideology and traditions, create danger of ideological, cultural and behavioral change upon the migrants, particularly upon their children who were born and raised there, until and unless they are taken care of.
 - iv. The phenomenon of brain drain causes Arab countries 200 billion dollars annually.(43)
 - v. Statistics show that 7350 Iraqi scientists migrated to the west between 1991 – 1998 due to the embargo imposed on Iraq.(44)
 - vi. In the first three years of American invasion of Iraq (between 2003 – 2006), eighty nine (89) university professors and scientists were assassinated in Iraq.(45)

There could be some positive impacts of the brain drain also, if this phenomenon is properly supervised and guided, maximum advantage could be taken from it.

Positive impacts of brain drain:

- a. Openness and cultural interaction of the Islamic Ummah with the world at large and getting benefit from the scientific and cultural produce of other nations and civilizations.
- b. Grasping the scientific knowledge and skills from the original sources i.e. the west, as the migrating scholars carry very rare intellectual abilities.
- c. Knowledge of the goals, strategies, sources and philosophies of the western scientific outcome from inside their research centers.
- d. Publishing and teaching the obtained scientific knowledge in the universities of the Islamic world and participating with the research centers and the decision making authorities.
- e. Screening the obtained scientific knowledge from the west and purifying it from whatever contradicts with the beliefs and values of

articles. The UNDP's Human Development report mentions that in the period between 1996-2002, only \$24 annually were spent on an Arab researcher from the GDP while in the industrial nations this amount reaches \$124 and it reaches \$110 in Israel. (42)

Social Reasons:

They are represented in the spread of scientific illiteracy among the Arab and Islamic societies as these societies seldom appreciate and show concern to the scholars in general and highly expert among them in particular, which makes these scientists strangers in their own homelands, unlike what they see and find in the western societies that this appreciation and concern is shown not only by the society but on the state level also. Precious awards are given to them and the media coverage for their research is ensured. Their researches are not only published rather the important political decisions are based on these studies. On the contrary, the stagnancy in production and development and depriving the society from basic human needs like drinking water, electricity and health care, particularly in poor Muslim countries have pushed the talented individuals out of their homelands. At the same time the modern means of communication have opened new horizons for the Muslim youth who have become aware of the available opportunities ahead of them as compared to what their homelands have to offer them.

Brain drain between loss and gain:

It may be seen that there are some strong negative and positive imprints which this migration has left. They could be summarized as under.

Negative impacts of the brain drain:

A great wave of brain drain that left the Arab and Islamic societies empty from many great scientists at a time when the Muslim world was in dire need of them, which led to inviting scientists from abroad who were not only very expensive rather they were not loyal to the Muslim world also, and this consequently had its own harms politically and economically. A report by Arab league says:

- a. 54% of Arab students who go abroad to study, do not come back to their countries.
- b. 34% of physicians in UK are from Arab countries.
- c. 75% of highly educated Arabs have migrated to USA, UK and Canada.
- d. The Arab world contributes 31% of total brain drain from developing countries to the west.
- e. The Arab world contributes 50% of physicians from the total number of physicians who migrate from developing countries to the west.