

Conflict of Natural Law with Positive Law: Example of the Wealth Tax

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Natural law is used to represent the ideal legal order. Natural law is a teaching that holds fundamental rights acquired from being human. The concept of positive law refers to the law in force. In other words, the understanding of positive law reveals the single and real law, which is in force. From ancient Greece to today, ideal philosophy of law has been in conflict with the existing legal system. Sometimes natural law was dominant, but sometimes the positive law has lead mainstream philosophy. In essence, there is often a dilemma or contention between these two law philosophies.

The natural law and positive law had different opinions about concept of justice, equality and freedom. According to the understanding of natural law, human rights have been regarded as ideal rights and they have been a common idea that all humanity possesses and must have. In this context, it is not a matter of whether a right belonging to the ideal rights is included in the positive law. On the other hand, according to the concept of positive law, human rights can be defined as rights created in writing by a competent agent in a certain place and at time, nationally or internationally. As seen, both approaches to human rights provide different views.

The superiority of positive law until the twentieth century has left its place under natural law with the influence of changing socioeconomic structures. Natural law in particular, keeping human rights above all, even from the state, can be seen as a sufficient example to reflect the new philosophy of law. In this context, Wealth Tax, which was applied in Turkey for a short period in 1942-43 and which has been removed from the reactions, is only one of the cases where natural law lost its superiority over positive law. With the Wealth Tax law concept of equality, justice and freedom has been ignored. The reason for the taxation of wealth tax is shown as taxing high profitability arising from war and has not targeted any group of people, ethnic group. Except for the official reason and written statement of the law, in practice, the tax has made the taxpayers of ethnic groups accountable to certain groups living in the country.

In the study, examination of the Wealth Tax in the context of natural law and positive law is aimed. In addition, the socioeconomic aspects of the Wealth Tax have been discussed and tried to put forward the effect created in the legal perspective. The original aspect of the work was the application of the Asset Tax in the context of positive law and the opinions and recommendations of the natural law philosophy against this law.

References

- Akan, A. (2011), "A Critical Analysis of the Turkish Press Discourse against Non-Muslims: A Case Analysis of the Newspaper Coverage of the 1942 Wealth Tax", *Middle Eastern Studies*, 47(4), 605-621.
- Akar, R. (2005), "Tek Parti Dönemi: Varlık Vergisi'nin Ekonomik, Toplumsal ve Siyasal Boyutları", *Türkiye'de Azınlık Hakları Sorunu: Vatandaşlık ve Demokrasi Eksenli Bir Yaklaşım Sempozyumu*, 9-10.
- Akar, R. (2009), *Aşkale Yolcuları: Varlık Vergisi ve Çalışma Kampları*, İstanbul: Doğan Kitap.
- Akıllıoğlu, T. (1995). *İnsan Hakları (Kavram, Kaynaklar ve Koruma Sistemleri)*. Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi İnsan Hakları Merkezi Yayınları.

- Akın, İ. (1971), *Temel Hak ve Özgürlükler*, İstanbul, Fakülteler Matbaası.
- Aktar, A. (1996), “Varlık Vergisi ve İstanbul”, *Toplum ve Bilim*, (71), 94-147.
- Aktar, A. (2004), *Varlık Vergisi ve ‘Türkleştirme’ Politikaları*, İstanbul, İletişim Yayınları.
- Aksanyar, N. & M. Biçer (2008), “II. Dünya Savaşında Çıkarılan Varlık Vergisinin Türk Basımında ve Kamuoyunda Yansımaları (11 Kasım 1942-15 Mart 1944)”, *Dumlupınar Üniversitesi Sosyal Bilimler Dergisi*, (21), 379-400.
- Aybar, R. (2015), *İnsan Hakları Hukuku*, İstanbul, İstanbul Bilgi Üniversitesi Yayınları.
- Bakkal, U. (2003), “Varlık Vergisi Kanunu’nun Maliye Teorisindeki Vergilendirme İlkeleri Çerçevesinde Değerlendirmesi”, *Maliye Araştırma Merkezi Konferansları*, 43-44.
- Beysan, N. (2015), *Hak Kavramının Hukuk Felsefesi Açısından Analizi*, İstanbul: On İki Levha Yayıncılık.
- Clapham, A. (2010), *İnsan Hakları*, Ankara, Dost Kitabevi.
- Çetinoğlu, A.S. (2009), *Varlık Vergisi 1942-1944: Ekonomik ve Kültürel Jenosid*, İstanbul, Belge Yayınları.
- Finnis, J. (2011), *Natural Law and Natural Rights*, Oxford University Press.
- Gözler, K. (2008), “Tabii Hukuk ve Hukuki Pozitivizme Göre Adalet Kavramı”, *Muhafazakâr Düşünce*, 4(15), 77-90.
- Güriz, A. (2014), *Hukuk Felsefesi*, Ankara, Siyasal Kitabevi.
- Hazar, N. (2015), *İnsan Hakları ve Diplomasi*, İstanbul, Büyükdadağ Yayınları.
- Kafaoğlu, A.B. (2002), *Varlık Vergisi Gerçeği*, İstanbul, Kaynak Yayınları.
- Karagöz, Y. (2002), “Liberal Öğretide Adalet, Hak ve Özgürlük”, *CÜ Sosyal Bilimler Dergisi*, (26), 267-295.
- Karaosmanoğlu, F. (2012), *İnsan Hakları*, Ankara, Seçkin Yayıncılık.
- Kayra, C. (2011), *Savaş Türkiye Varlık Vergisi*, İstanbul, Tarihçi Kitabevi.
- Keyman, S. (1978), “Hukuki Pozitivizm”, *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 35(1), 17-55.
- Maritain, J. & D.C. Anson & C.M. Perry (1943), “The Rights of Man and Natural Law”, *Journal of Philosophy*, 40(18), 501-503.
- Ökte, F. (1951), *Varlık Vergisi Faciası*, İstanbul, Nebioğlu Yayınevi.
- Rommen, H.A. (2012), *The Natural Law*, Liberty Fund.
- Troper, M. (2012), *Hukuk Felsefesi*, (çev. I. Ergüden), Ankara, Dost Kitabevi.