

IBN SINA AND THE PHILOSOPHY OF LAW AND THE STATE

Abu Ali Al-Husayn ibn Abd Allah Ibn Sina was born in 370/980 in Afshana near Bukhara and received his early education from his father who was an Ismaili. Ibn Sina himself was never attracted to the Ismailiyah School. At the house of his father he met the leading scholars of his day. A precocious child with an exceptional memory that he retained throughout his life, he had memorised the Holy Quran and much Arabic poetry by the age of ten. Thereafter he studied logic and metaphysics under teachers whom he soon outgrew in knowledge and then spent the next few years until he reached the age of eighteen in his own self-education. He read avidly and mastered Islamic Law, then medicine and finally metaphysics. Having cured the Samanid Amir of Khursasan, Nuh ibn Mansur, of a severe illness he was allowed to make use of the splendid library of the Samanid princes, the first great native dynasty that arose in Persia after the Arab conquest. By the time he was twenty one he was accomplished in all branches of formal learning and had already gained a wide reputation as a outstanding physician. His services were also sought as an administrator and for a while he even entered the government service as a clerk.

But suddenly events caused Ibn Sina to change the pattern of his life. His father died and the Samanid house was defeated by Mahmud of Ghazan, the Turkish leader who established the Ghaznavid rule in Khorasan. This was a tumultuous period when new Turkish elements were replacing Persian domination in Central Asia and local Persian dynasties were trying to gain political independence from the Abbasid caliphate in Baghdad. Ibn Sina wandered for a while in different cities of Khorasan and then left for the court of the Buyid princes, who were ruling over central Persia, first going to Rayy (near modern Teheran) and then to Qazwin, where he made his livelihood as a physician. In these cities too he did not get sufficient social and economic support nor the necessary peace and calm to continue his intellectual work. He went therefore to Hamadan in West Central Persia, where Shams ad-Dawlah, another Buyid prince

was ruling. He became court physician and enjoyed the favour of the ruler to the extent that twice he was appointed Minister. However political reactions and intrigues forced him into hiding for some time and he was even imprisoned.

It was in this period that he began his two famous works the *Kitab Ash-Shifa* (the Book of Healing) and the *Qanun fi at-tibb* (the Canon of Medicine). Occupied during the day with his duties at court as both physician and administrator he spent almost every night with his students composing these and other works and carrying out philosophical and scientific discussions related to them. Even in hiding and in prison he continued to write.

The last phase of Ibn Sina's life began with his move to Ispahan. In 1022 Shams al-Dawlah died and Ibn Sina after a period of difficulty that included imprisonment, fled to Ispahan, where he was to spend the last 14 years of his life in relative peace. He was esteemed highly by Ala' ad-Daulah, the ruler, and his court. Here he finished the two major works which he began in Hamadan and wrote most of his nearly 200 treatises. Accompanying Ala Ad-Dawlah on a campaign, Ibn Sina fell ill and despite his attempts to cure himself, died in Hamadan in 428/1037.

HIS POLITICAL PHILOSOPHY

It is usually stated that Ibn Sina owed a great deal in formulating his philosophical system to Aristotle, but his system cannot be strictly called Aristotelian. In both his epistemology and his metaphysics he adopted Neo-Platonic doctrines but formulated them in his own special way. More important still was the influence of Islamic thought and philosophy. As a political thinker, Ibn Sina sought to forge a synthesis between Greek thought and Islam.

Muslim political thinkers including Ibn Sina based their political doctrines on Plato's Republic and Laws rather than on Aristotle. The Platonic political traditions yielded the description of the ideal State, which came to be identified with the State founded by Islam, and its division of the citizens into distinct classes and the image of the philosopher king who was identified with the prophet or imam. The *Republic* which starts out ostensibly as an inquiry into the meaning of "Justice" turns

early into an examination of the life of the "Just Man," which can be found in the life of the "Just State". Justice is Plato's name for that kind of individual life where every person does his own business and the life of the state where each individual and each class performs its appropriate function. Justice in the individual and justice in the State are a realm of order, an earthly amalgam of that unearthly eternal order which is the world of ideas. The "*Republic*" is not a book of politics but a book of morals. We see justice dominant in the state but it is the state as the basis for moral integrity and for the health and integrity of the individual soul.

Plato's social and political theories have been summarised as follows¹—

- I. He attacks contemporary politics, the Sophists, individualism in all its forms, democracy as unstable and based on ignorance, factionalism, class struggle, love of wealth and power, individual freedom, change, majority rule.
- II. The ideal state is based on absolute justice, which involves unity, single mindedness, specialization of function by all, professional administrators, professional soldiers, and workers; "one nation, indivisible, with duties and justice for all".
- III. Ideal happiness in the state is the performance of one's duty to the best of one's native ability. Man is the servant of the state. True freedom is discipline to the whole, not the pursuit of personal happiness. Each class has its special function. The individual must be subordinated to the interests of the entire state.
- IV. Government should be in the hands of an intellectual elite. Reason (philosopher-king) aided by force (soldiers) must rule, and the irrational (workers) must be suppressed or trained in self-control.
- V. "Like man, like state; the state is the individual writ large". Hence the need for compulsory, state-controlled

¹M. Reinhold Classics: Greek and Roman, New York, 1962 p. 216--217.

education for the two upper classes to train leaders and a professional army.

- VI. Emancipation of women, abolition of family and home for two upper classes; eugenic breeding, not community of wives.
- VII. Abolition of private property for two upper classes; not economic communism, but more like an ascetic monastic life. The two upper classes are to enjoy true leisure to fulfil their duties with no worries concerning material goods and none of the distractions of personal possessions.
- VII. No "art for art's asake"; strict censorship of art and literature.

Ibn Sina in dealing with politics shows that he was interested in all aspects of Plato's *Republic*. He also draws a distinction between the secular kingship (*mulk*) which is the subject of the *Republic* and another kind of politics, concerned with prophecy and the Shariah, which he based on Islam but with references to Plato's *Laws*. He thus links the ideal state of Islam with the ideal state of Plato's philosopher king. In his treatise on *Prophecy* he assigns the prophet a double task: he must ensure the good order of the physical world through political government and that of the spiritual world by means of philosophy. According to Ibn Sina the existence of prophecy is necessary and the human race needs the Shariah for its existence, preservation and future life. Ibn Sina distinguished between the three practical sciences: Ethics as taught by Aristotle in his *Nicomachean Ethics*; Economics as taught in *Bryson*; and Politics which is taught by Plato and Aristotle. All three divisions are necessary to ensure one's happiness in this and the after life.

If we compare the views of Plato and Ibn Sina we find that while Plato stresses the influence of morals, Ibn Sina has more reliance on the law. As we shall see in many places Ibn Sina says "It ought to be enacted". Moreover although he does not refer to the Holy Quran or the Hadith it is clear that Ibn Sina was influenced in his thinking by them. In particular reference might be made to Surah Balad (Surah XC) in the Holy Quran to the effect —

"I do call to witness this city. And you are a freeman and leader of this city. And the ties of parent and child. We have created man into toil and struggle. Does he think none has power over him? He may say boastfully "Wealth have I spent in abundance!" Does he think none beholds him?

Have we not made for him a pair of eyes? And a tongue and a pair of lips? and shown him the two highways? But he has made no haste on the path that is steep. And what will explain to you the path that is steep?

It is the freeing of the bondman or the giving of food in a day of privation, to the orphan with claims of relationship or to the indigent down in the dust.

Then will he be of those who believe and enjoin patience, constancy and self restraint and enjoin deeds of kindness and compassion.

Such are the companions of the Right Hand. But those who reject Our signs, they are the companions of the Left Hand. On them will be fire vaulted all over."

Ibn Sina did not write any political treatises as such. He is concerned with human happiness and perfection, the highest stage of which consists in the contemplation of God and in mystical union with Him. It is in this context that man as a political being, a citizen, is considered.

Among the works of Ibn Sina, which deal with political philosophy, which have come down to us are the following –

- (a) *Fi aqşam al'ulum al aqliyah*
- (b) *Risalah As-Siyasah*
- (c) *Kitab Ash-Shifa*
- (d) *Ithbat un-Nubuwwat*
- (e) *Kitab an-Najat*

The character and the law of the Islamic community have their origin in revelation and in the prophet Mohammed (Peace and blessings be upon him) and it is natural therefore that the central problem of political philosophy in Islam would be that of understanding the phenomenon of prophecy, that is, the rational explanation of the nature and source of the prophet's

knowledge and the nature and source of the powers through which he convinces the multitude and induces them to carry out the commands conveyed through him.²

THE THEORY OF THE INTELLECT

We begin first with Ibn Sina's theory of the intellect. According to Ibn Sina the potential intellect, although it comes into existence as something personal to each individual, is nevertheless an immaterial and immortal substance.³ Its actualization begins when man conceives the primary general truths which are the basis of all demonstration,⁴ as for example, that the whole is greater than its part and that two things equal to the same thing are equal to each other — truths that is which are not acquired by induction or by deduction. This stage is called '*aql bi'l malaka* or intellect *in habitu*. When by means of these primary truths, we acquire also the secondary ones and when, on the whole, our mind can operate by itself without any more help from the sensitive and imaginative faculties, we reach the stage of development which Ibn Sina calls the "actual intellect" (intellect *in actu*). And when we do actually operate with this newly acquired power our mind becomes" '*aql bi'l-fil al mutlaq* (intellect *in acta absoluto*) or '*Aql mustafad* (intellect *acquisitas*).⁵

According to Ibn Sina, the intelligible forms which the human intellect receives are not produced by abstraction from matter, but come directly from the Active Intelligence.

"When the rational faculty considers the individual forms which are in the representative faculty and is illuminated by the light of the Active Intelligence which is in us — these imaginative (sensible) forms become abstract from matter and its attachments and are imprinted in the rational faculty not in the sense that the intelligible shrouded in

² Muhsin Mahdi, *Ibn Khaldun's Philosophy of History*, 1957, p. 84–85 quoting Ibn Sina's *Aqşam* 108, *Nubawwat* 120 ff.

³ Ibn Sina *Kitab al-Najat* (Cairo 1938) pp. 183–191; *Kitab al-Sbifa*.

⁴ This is based on Aristotle, although Aristotle nowhere states what these primary truths are. Some commentators of Aristotle later identified these first premises with the Active Intellect.

⁵ Ibn Sina *Kitab al-Najat*, p. 166.

(material) attachments — while being itself abstract — produces its like in our minds, but only in the sense that its consideration prepares the soul so that the abstract form should emanate upon it from the Active Intelligence.”⁶

Ibn Sina rejects the extreme interpretation attributed by him to Porphyry, of the doctrine that the mind becomes the forms which it receives. It is true that the subject, in the act of knowledge, becomes its object in some sense for all knowledge consists in the fact that the cogniser takes on a likeness or form of the object, but it is absurd to say that the soul becomes the forms, because if one took one form and became it, it could not take on another.

“The soul knows itself and this self-knowledge makes it intellect, intelligible and (actual) intellection. But its knowledge of the intelligibles does not make it so. For the soul so long as it subsists in the body, is always only a potential intellect, even though it becomes actual with regard to some intelligibles. The view that the soul itself becomes intelligibles is, according to me, something impossible —. For if this is because it discards one form and takes on another and with the first form it is one thing and with the second another thing, then the first thing does not really become the second thing, but it is destroyed and only its substratum or part of it survives. If the soul does not become in this way then let us see how otherwise this can happen. So if we say that if something becomes something else then, when it becomes the something, it itself is either existent or non-existent. If it is existent then the second thing too (which it becomes) is either existent or not. If the second thing exists too, then there are two existents not one. But if the second thing does not exist, then the first thing has become something non-existent and not something else existent — and this is absurd. But if the first thing has become non-existent, then it has not become something else, but has ceased to exist and something else has come into existence.

How shall the soul then become forms of things? The man who has misguided people most in this regard is the one who has composed the *Isagogy* for them. — True the forms of things come to inhere in the soul and decorate it and the soul is like a place for them, thanks to the

⁶ Ibn Sina *Kitab As-Sbifa* BK VI Chapter V. Translated by Michael E. Marmura in “Medieval Political Philosophy”.

material intellect. If the soul becomes the form of an actual existent, then since the form itself being actuality cannot accept anything else (i.e. any other form) — it follows necessarily that the soul cannot accept any other form — But we do in fact see that the soul accepts another form different from the one already accepted, for it would be strange indeed if this second form does not differ from the first one, for then accepting and non-acceptance would be the same thing!⁷

Thus Ibn Sina maintains that the human soul, so long as it is in the body, cannot become these forms absolutely, because it cannot receive them all at once and indivisibly, and therefore if it became one of the forms, it could not receive another form. If it were possible for the human soul to accept all the forms at once then obviously its relation to the forms would qualitatively change. Such a possibility exists them, according to Ibn Sina for the soul after its separation from the body. But Ibn Sina also declares that there may be other human souls, namely the prophetic souls, who accept the separate intelligibles either at once or almost at once and that therefore their relation to these intelligibles is not the same as that of an ordinary intellect to them.

“So long as the ordinary human soul remains in the body it is impossible for it to accept the Active Intelligence all at once — and when it is said that a certain person is cognisant of intelligibles (or forms) it only means that he can present in his mind a certain form when he wishes and this means that whenever he wishes he can have some sort of contact with the Active Intelligence, so that the intelligible will be reflected (or inprinted) in his soul emanating from the Active Intelligence —. But when the (ordinary) human soul quits the body and its accidents, it is then possible for it to have a perfect contact (or union) with the Active Intelligence”.⁸

According to Ibn Sina then our actual intellect is not intellect proper, for proper intellect externally thinks and becomes its object, but is rather like a mirror in which each form emanating

⁷ Ibn Sina *Kitab Asb-Sbifa* Book V Chapter VI.

⁸ Ibn Sina *Kitab Asb-Sbifa* Book V Chapter VI

from the Active Intelligence, is imprinted or reflected and then withdrawn as we turn out attention to something else.

The intellectual knowledge of the human soul is not something simple and undivided but piecemeal and discrete where not only is there an infinite multiplicity of propositions but even each proposition is composed of parts viz. subject and predicate. But even in our ordinary cognitive experience we are aware that this method of knowledge is not the only mode but there is a higher level at which the intellect is not receptive but creative. According to Ibn Sina, whenever we entertain a proposition e.g. "every man is an animal" we are thinking in time for the order of the concepts in a proposition also implies a time order. The concepts making up a proposition are certainly universal and as such can only be conceived in an immaterial substance, but the proposition itself, since it is made up of discretely arranged concepts is entertained in time. Further the order in which the concepts are arranged in any given proposition is not unique and essential, but can be reversed: any given proposition can be translated into a proposition in which the subject-predicate order may be reversed. Since however it is not in the power of our minds to entertain all propositions at once, it follows that the propositions we are not actually entertaining exist not in actuality but in a state of *habitus* or second-order potentiality. These two methods of knowledge correspond respectively to *intellect in actu* and *intellect in habitu*.

According to Ibn Sina there is a third mode of knowledge, which is called *aql mustafad* (Discursive or acquired intellect).

"An example of this is when you are asked a question about what you have known (that is in a simple manner) previously or what you are going to know soon and so the answer presents itself to you presently. This knowledge consists in the fact the you are sure you will be able to answer the question on the basis of what you already know, although there is as yet no detail in your knowledge. On the contrary you begin to detail and order this knowledge in your mind when you begin to give the answer which proceeds from an assurance that you know it, this simple assurance being antecedent to the ensuing detail and order —. This mode of knowledge is not something ordered and explicit in your thought but is the principle of this explicit knowledge, being cojoined with an assurance —. If someone says that this is only a potential

knowledge but its potentiality is very near to actuality, this is false, for the man has an actual assurance which is not wanting to be realized through a near or remote potentiality. The existence of this assurance means that its possessor is sure that it (i.e. the knowledge) already exists — Since the actual conviction on the part of the man that the answer already lies in him must point to something actually known, it is therefore already known to him in this simple manner. Then he wishes to make it known in a different way. The strange thing is that the man who answers the questions, when he begins to teach the other man the detail of what has suddenly occurred to him, himself learns at the same time and acquires knowledge in the second sense. And that (simple) form begins to order and explicate itself in his mind simultaneously with the words.

One of these two modes then is the discursive method which becomes actual only by an order and a composition (of concepts), while the second is the simple knowledge which does not have successive concepts but is one and from which (successive) forms flow into their recipient (i.e. the human soul). This is the producer and principle of what we call psychic (discursive) knowledge and belongs to that absolute intellectual power of the soul which resembles the Active Intelligence. But as regards order and explicitness, they belong to the (rational) soul as such. — As for how does the rational soul have a principle which is not soul and which possesses a knowledge which the soul does not possess is a question deserving of thought and you must find its answer from yourself.”⁹

PROPHECY

Ibn Sina's doctrine of the intellect leads us to a form of knowledge where the soul begins to receive knowledge from above instead of looking for it to the natural world below it or rather where the soul receives a power whereby it creates knowledge. This power or faculty which creates knowledge in the soul is not a part of the soul itself and is regarded as a form of knowledge since it is accompanied by a strong assurance and certainty, and further as a higher and simpler form of cognition, since it creates the detailed and discursive knowledge in the soul. The prophet then is a person of extraordinary intellectual endowment such that by means of it he is able to know all things by himself without the help of instruction by an external

⁹ Ibn Sina *Kitab Ash-Shifa* Book V Chapter VI

source. People differ in their power of intuition i.e. hitting at the truth, without consciously formulating a syllogism in their minds and therefore without time. Since there are people who are almost devoid of this power while there are others who possess it, again some in greater others in lesser degree, it follows that there may be a man naturally so gifted that he intuits all things at a stroke or "flares up" with an intuitive illumination, as Ibn Sina puts it. The Active Intelligence deposits the forms of all things past, present and future into the prophet's soul and Ibn Sina adds that this deposition is not a mere irrational acceptance on the part of the prophet but has a rational order of cause and effect "for a mere acceptance (as of chance happenings as it were) in the realm of things which are known only though their causes does not possess certainty and rationality".

According to Ibn Sina all intellectual knowledge comes from the Active Intelligence and not from perceptive experience. But there are two ways in which the prophetic intellect differs from ordinary philosophical or mystical cognition. In the first place, the ordinary mind has first to exercise itself on the data of perceptive experience. This is because the human mind is like a mirror or like an eye. This mirror in an ordinary person may be rusty though its contact with the body or may be imperfect. In this case the sensitive and cognitive processes are necessary which constitute the polishing of the mirror or the treatment of the eyes. But in the case of the prophetic mind this is not necessary since it is by nature pure and can therefore directly contact the Active Intelligence.

"The prophetic intellect possesses a strong capacity for this (i.e. for contact with the Active Intelligence) as though it possesses the second capacity (i.e. the intellect in habitu), nay as though it knows everything from within itself. This degree is the highest point of this capacity and this state of the material intellect should be called Divine Intellect. It is of the kind of the intellect in habitu except that it is of a very high order and not all human beings partake of it".¹⁰

Secondly, the ordinary mind even when it has risen to intellec-

¹⁰ Ibn Sina *Kitab Ash-Najat* p. 167.

tual cognition receives intelligibles only partially and one after the other: one reflection has to be removed from the mirror in order to give place to the succeeding one. The prophet's mind on the other hand receives all knowledge at once.

"Now since everything that essentially receives a faculty receives it in two ways viz. indirectly or directly similarly reception by the human soul from the Universal Active Intelligence is in two modes: either directly, as the reception of common notions and self-evident truths or indirectly as the reception of secondary intelligibles, through instruments and material things, like external sense, *sensus communis*, the estimative faculty and the imaginative – deliberative faculty.

Now since the rational soul sometimes receives knowledge indirectly and sometimes directly, it follows that it does not possess direct reception essentially but accidentally. Essential direct reception is then in something else which is acquired and which is the Angelic Intellect possessing essential direct reception – Next we notice that both the receiver and the received are of varying degrees as regards strength and weakness, of facility and difficulty. Now it is impossible that this should not have its ultimate limits: the limit on the side of weakness is that a (human soul) cannot accept even a single intelligible either directly or indirectly while the limit on the side of strength is that a (human soul) should accept (all knowledge) directly.

Now we have made clear (elsewhere) that when something is a composite of two notions and one of the two is found by itself, the other must also be found (i.e. must exist) by itself. We have (thus) seen that there are things (i.e. human beings) which do not accept directly any emanation from the Active Intellect, others again which directly receive all intelligible emanations –

This last type is called the prophet and to him belongs the ultimate limit of excellence in the realm of material forms. And since that which excels is ruler over that which it excels, the prophet is the ruler over all the species which he excels.

Revelation is this emanation from the Universal Intellect into the prophet's soul and the angel is this extra faculty or power received by the prophet as part of his nature and emanation from the Active Intelligence as if it emanates into the prophet being continuous with the

Universal Intelligence, flowing from it not essentially but accidentally".¹¹

THE MISSION AND THE LAW

It is an integral function of the Prophet's office that he should come forth to his people or to humanity at large with a religion and a social mission and that that he should legislate. The prophet is not a mere thinker or a mystic but an actor moulding actual history on a definite pattern.

In his *Kitab Al Shifa*, Ibn Sina said –

"It is clear that man differs from the other animals in that he cannot lead a proper life when isolated as a simple individual, managing his affairs with no associates to help him to satisfy his basic needs. One man needs to be completed by another of his species, the other in turn by him and one like him. Thus for example one man would provide another with vegetables, while the other would bake for him; one man would sew for another while the other would provide him with the needles. Associated in this way they become self-sufficient. And for this reason people have been forced to establish cities and contract societies. Those who are unwise enough not to establish cities with laws but are content to have a mere gregarious life without legal and contractual bases, would be engaged in devising means to govern a species most dissimilar to man and lacking the perfection of man.

If this is obvious then man's existence and survival require co-operation. Co-operation is only achieved through reciprocal transactions, as well as through the various trades practised by man. Reciprocal transactions demand law and justice and law and justice demand a lawgiver and a dispenser of justice. This lawgiver must be in a position that enables him to address men and make them adhere to the law. He must then be a human being.

Men must not be left to their private opinions concerning the law so that they disagree, each considering as just what others owe them, unjust what they owe others. Thus with respect to the survival and actual existence of the human species, the need for this human being is far greater than the need for such benefits as the growing of the hair on

¹¹ Ibn Sina *Risala fi-Itbbat Al-Nubawwat*, p. 121–124, translated by Michael E. Matmura in "Medieval Political Philosophy".

the eyebrow, the shaping of the arches on the feet and many others that are not necessary for survival but at best are merely useful for it.

Now the existence for the righteous man to legislate and to dispense justice is a possibility as we have previously remarked. It becomes impossible therefore that Divine providence should ordain the existence of those former benefits and not of the latter, which are their bases. Nor yet is it possible that that which He knows to be within the realm of possibility but whose realization is necessary for introducing the good order, should not exist?

A prophet therefore must exist and he must be a human being. He must also possess characteristics not present in others so that men could recognise in him something that they do not have and which differentiates him from them. Therefore he will perform the miracles about which we have spoken.

When this men's existence comes about, he must lay down laws about men's affairs by the permission of God the Exalted, by his command and inspiration. The first principle in his legislation is to let men know that they have a Maker, One and Omnipotent; that He knows the hidden and the manifest; that obedience is due to Him since command must belong to Him who creates; that He has prepared for those who obey Him afterlife of bliss, but for those who disobey Him an afterlife of misery. This will induce the multitude to obey the decrees put in the prophet's mouth by God.¹²

ESTABLISHMENT OF THE STATE AND THE HOUSEHOLD AND GENERAL LAWS PERTAINING TO THESE MATTERS

Ibn Sina deals with the establishment of the State and the household and his emphasis is on the general laws pertaining to these matters.

His views may be summarised under three heads –

- (a) principles relating to politics
- (b) principles relating to economics
- (c) principles relating to the household and the family

¹² Ibn Sina *Kitab Asb-Shifa* Book X Chapter II, translated by Michael E. Marmura in "Medieval Political Philosophy".

(a) *Principles relating to politics*

Ibn Sina assigns to the ruler the primary task of ordering the life of society organized in the State by dividing the citizens (as Plato had done) into three estates: the rulers, the artisans and the guardians. Each group is administered by a leader who in turn appoints the leader of lesser authority over smaller units. Every citizen executes his allotted task, so that there is not one person who does not benefit the state by his work. Idleness is not to be tolerated. The ruler should provide for the care of the sick and the infirm and for those who become impoverished and unable to earn their living. It is ignominious to kill those who are no longer able to fulfil their civic duties through no fault of their own. Ibn Sina stresses the need for capital in order to guarantee the general welfare and in particular to provide for the guardians. It is to be made up of taxes, fines and legal booty. The ruler must forbid games of chance, for gain ought to be the result of work which is also of advantage to others. Theft, robbery and *riba* are also forbidden since they are detrimental to society.

"The legislator's first objective in laying down the laws and organizing the city must be to divide it into three groups: administrators, artisans and guardians (of the peace). He must place at the head of each group a leader under whom he will place other leaders, under these yet others, and so forth until he arrives at the common run of men.

Thus none of the city will remain without a proper function and a specific place: each will have its place in the city.

Idleness and unemployment must be prohibited. The legislator must leave the way open to no one for acquiring from another the share of a livelihood necessary for man while exempting himself from any effort in return. Such people he must vigorously restrain. If they fail to refrain from such a practice he must then exile them from the land.

But should the cause here be some malady or defect, the legislator must set aside a special place for such cases under someone's charge.

There must exist in the city a common fund, part of its consisting of duties imposed on acquired and natural profits such as fruit and agricultural products, part of it imposed as punishment, while another part should consist of property taken from those who resist the law, that is

of war-booty. Thus the fund will serve to meet the exigencies of the common good, to meet the needs of the guardians of the peace who do not work in any craft, and those prevented from earning their livelihood by maladies and chronic diseases.

Some people have held the opinion that the diseased whose recovery is not to be expected should be killed. But this is base for their sustenance will not hurt the city. If such people have relatives enjoying a superfluity of means, then the legislator must impose on these relatives the responsibility for their people.

The punishment of fine should not be totally imposed on the wrongdoer who commits the offence, but the law should provide that a portion of it be borne by the guardians or relatives who do not prevent it or exercise supervision over the person committing it. The punishment of fine should be lightened by allowing time for its payment. Offences which are punishable by fine are those which are committed by neglect or mistake. They cannot be excused merely because they were caused by neglect or mistake.¹³

PRINCIPLES OF ECONOMICS

Ibn Sina deals with five matters which should be forbidden by the law. They are idleness, gambling, theft, cheating and robbery, *riba* and acts of dishonour.

“Just as idleness must be prohibited so should professions like gambling, whereby properties and utilities are transferred without any benefit in exchange. For the gambler takes without rendering any service at all. Rather what one takes must always be a compensation in return for work, a compensation that is either of substance, utility, good remembrance or any other thing considered as a human good.

Similarly professions that lead to the opposite of welfare and usefulness, such as the learning of theft, brigandage, leadership of criminal bands and the like must be prohibited.

Professions that allow people to dispense with learning those crafts that are productive for society — professions based on *riba* — must be prohibited. For *riba*, is the seeking of excess profit without practising a craft to achieve it, even though it does bring a profit in return.

¹³ *ibid.*

Also those acts which if once permitted would be detrimental to the city's growth — like fornication and sodomy — which dispense with the greatest pillar on which the city stands, that is marriage, must be prohibited.¹⁴

PRINCIPLES RELATING TO THE FAMILY

Ibn Sina's discussion of marriage and family life is based on Islamic Law with the Greek classical tradition in the background. Marriage guarantees the propagation and perpetuation of the human race; the family is the foundation upon which the State must be built; it forges a bond between parents and children which should serve as a pattern for social life.

"The first of the legislator's acts must pertain to marriage resulting in issue. He must call and urge to it. For by marriage is achieved the continuity of the species, the permanence of which is proof of the existence of God, the Exalted. He must arrange it in such a way that matrimony takes place as a manifest affair, so that there will be no uncertainties concerning progeny causing defects in the proper transfer of inheritances, which are a source of wealth. — Through the concealment of marriage also other defects occur, for example in the matter of maintenance and other matters.

The legislator must take firm measures to assure the permanence of the union so that not every quarrel shall result in a separation that disrupts the bond between children and parents and causes new marriages to take place. In this there are many sorts of harms. Also what is most conducive to the general good is love. Love is only achieved through friendship: friendship through habit: habit is produced through long association. This assurance with respect to the woman, consists in not placing in her hands the right to make the separation. For in reality she is not very rational and is quick to follow passion and anger.

But a way for separation must be left open and not all doors closed. To prevent separation under all circumstances results in all kinds of harmful consequences. Of these we note the fact that some natures cannot adapt themselves to others: the more they are brought together the greater the resulting evil, aversion and unpleasantness. Or again some might get an unequal partner who is of bad character or repellent in nature. This will induce the other partner to desire someone else for

¹⁴ Ibid.

desire is natural and this in turn leads to many harmful consequences. It might also happen that married people do not cooperate for procreation and if exchanged for other partners they could. Hence some means for separation is necessary. But the law must be strict about it.

The means for separation must not be placed in the hands of the less rational of the two, the one most prone to disagreement, confusion and change. Instead this must be relegated to the judges who will affect the separation when they ascertain the woman's mistreatment by the other partner.

In the case of the man an indemnity must be imposed on him so that he will approach separation only after ascertainment and he finds it to be the right thing for him in every way.

The legislator must nevertheless leave the door open for reconciliation (*ruju'*), without however emphasising it lest this encourages thoughtless action. On the contrary he must make reconciliation more difficult than separation. How excellent was what the greatest of legislators commanded — that the man after thrice pronouncing the formula for divorce is not allowed to remarry the woman until he brings himself to drink a cup unsurpassed in bitterness, which is first to let another man marry her by a true marriage and have real relations with her. If such a prospect awaits a man, he will not approach such a separation recklessly, unless he is already determined that the separation is to be permanent or unless he is of defective character and takes perverted pleasure in scandal. But the likes of these fall outside the pale of men who deserve the seeking of their welfare.

Since women by right must be protected in as much as she can share her sexual desire with many, is much inclined to draw attention to herself and in addition to that is easily deceived and is less inclined to obey reason; and since sexual relations on her part with many men causes great disdain and shame, — it is important to legislate that women should be veiled and secluded from men. Thus unlike the men she should not be a bread winner. It must be legislated that her needs be satisfied by the man upon whom must be imposed her sustenance. For this the man must be compensated — Thus she cannot be married to another at the same time. But in the case of man this avenue is not closed to him though he is forbidden from taking a number of wives whom he cannot support. —

It must be legislated with respect to the child that both the parents must undertake his proper upbringing — the woman in her special care,

the man by providing maintenance. Likewise it must be prescribed that the child must obey, respect and honour his parents. For they are the cause of his existence and in addition have borne his support.¹⁵

THE IDEAL ISLAMIC STATE

In the last chapter of the *Kitab Ash-Shifa* Ibn Sina deals with certain aspects of the ideal state, concentrating on the khalifa and the imam. It is the duty of the lawgiver to impress upon the citizens their obligation to obey the *khalifa*, who takes the place of the Prophet. The caliph must possess noble virtues like courage, temperance and right conduct (*busn tadbir*). He must also have a high intelligence which will enable him to acquire practical wisdom and also an expert knowledge of the Shariah in which nobody must surpass him.

The election of the caliph must proceed on the lines prescribed by the law. Ibn Sina adds however that the electors become unbelievers if they are guilty of a wrong choice. He strongly condemns usurpation but nevertheless recommends that steps be taken to remove a tyrant or one who is intellectually and physically unfit to be a caliph.

Next he stresses the importance and value for the political, social and personal life of the citizens of the ideal Islamic State of religious duties in the narrow sense, like the Jumaah prayer and the Eids, fasting and pilgrimage. These observances bind those who fulfil them closely together, they strengthen their desire for the defence of the state by imbuing them with courage and devotion and finally lead them to virtues. Communal prayer calls down Allah's blessings upon the affairs of the state. The Head of the State must be present at these public functions of *ibadats*, and he must also participate in transactions which lead to the city's foundation, such as marriage and communal activities.

The Head of the State must also concern himself with *mu'amalat*, the social duties between citizens. He must regulate them in such a way that "they promote the construction of the two pillars of state namely family life (*munakabat*) and the generality of things men share in common (*musharikat*).

¹⁵ Ibn Sina *Kitab Ash-Shifa* Book X Chapter V, translated by Michael E. Marmura in "Medieval Political Philosophy".

"He must also legislate that people must help and protect others, their property and lives; without thus however entailing that the contributor should penalise himself unduly as a result of his contribution".¹⁶

Next Ibn Sina turns his attention to the opponents of the Sunnah within and to the enemies without, which brings him to a discussion of one of the principal duties of the caliph, *jihad*. This is the complement to the positive duty of co-operation in defence of life and property. Ibn Sina advocates punishment and war against the opponents of the prophetic law for refusal to obey the Shariah which Allah sent down cannot remain unpunished.

Ibn Sina emphasises the paramount need for law as the regulator of earthly life in the State.

"The legislator must also provide for punishment, penalties and prohibitions to prevent disobedience to the divine law. For not everyone is restrained from violating the law because of what he fears of the hereafter. Most of these punishments, penalties and so forth must pertain to acts which are conducive to the corruption of the city's order for example adultery, theft, complicity with the enemies of the city and the like. As for acts that harm the individual himself, the law should contain helpful advice and warning, and not go beyond this to the prescription of obligatory duties. The law concerning acts of worship, marriage and prohibitions should be moderate, neither severe nor lenient".¹⁷

Although the Khalifa should have an expert knowledge of the law, he can take counsel and delegate his duties.

"The ruler must relegate many questions, particularly those pertaining to transactions, to the exercise of the individual judgment (*ijtihad*) of the jurist. For different times and circumstances call for decisions that cannot be predetermined — The ruler must not impose specific prescriptions concerning these. Such an imposition would be defective since conditions change with time. Moreover it is impossible to make universal judgments that cover every contingency in these matters. He must leave this to the body of counsellors."¹⁸

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

Lastly Ibn Sina turns to ethics—

“It is necessary that the ruler should also prescribe laws regarding morals and customs that advocate justice, which is the mean. The mean in morals and customs is sought for two things. The one involving the breaking of the dominance of the passions, is for the soul's purification and for enabling it to acquire the power of self-mastery so that it can liberate itself from the body untarnished. The other involving the use of these passions is for worldly interests. As for the use of pleasures, these serve to conserve the body and for procreation. As for courage, it is for the city's survival. The vices of excess (of these) are to be avoided for the harm they inflict on human interests while the vices of deficiency are to be avoided for the harm they cause the city.

“Justice (*adala*) is the sum total of the three virtues wisdom, temperance and courage.

“By wisdom as a virtue is not meant theoretical wisdom but rather practical wisdom pertaining to worldly actions and behaviour. For it is deception to concentrate on the knowledge of this wisdom, carefully guarding the ingenious ways whereby one can attain it through every benefit and avoid every harm to the extent that this would result in bringing upon one's associates the opposite of what one seeks for oneself and distracting oneself from the attainment of other virtues. To cause the hand to be thus fettered to the neck means the loss of a man's soul, his whole life, the instrument of his wellbeing and his survival to that moment at which he attains perfection.

“Since the motivating powers are three — the appetitive, the irascible and the practical — the virtues consist of three things:

- (a) moderation in such appetites as the pleasures of sex, food, clothing, comfort and other pleasures of sense and imagination;
- (b) moderation in all the irascible passions such as anger, depression, pride, hate, jealousy and the like;
- (c) moderation in practical affairs, that is, in using worldly goods.

At the head of these virtues stand temperance, practical wisdom and courage; their sum is justice which however is extraneous to theoretical wisdom. Whoever combines the three virtues with justice is indeed the happy man. And whoever, in addition to this, wins the prophetic qualities, becomes almost a human lord and he is the ruler of the

terrestrial world and the vice-gerent of Allah in it.¹⁹

IBN SINA AS A MUSLIM PHILOSOPHER

Ibn Sina was a Muslim philosopher despite his use of the Aristotelian, Platonic and neo-Platonic ideas. The effect of the Islamic tradition upon his thought can be clearly seen from the many points in which he differed from his Greek predecessors and above all in his emphasis on the prophethood of Mohammed (Peace and blessings of Allah be upon him) and the significance of the Islamic Law.

In an article Dr. Muhammad Yusof Musa has summarised the political teachings of Ibn Sina under various heads and has shown that although they are influenced by Greek philosophy they are based on Islamic teachings. He has summarised the teaching of Ibn Sina under the following heads²⁰

1. Man leads a social life.

Although this follows Aristotle and Plato it can be justified on Islamic principles.

2. Man has the right of individual property.

In this he differs from Plato and follows the Islamic view.

3. It is wrong to kill a person who is disabled because of age or physical defect or disease.

Here too Ibn Sina differs from Plato and gives the Islamic view.

4. A person who is related by blood may be made liable to pay the fine of a person. This is in line with Islamic Law.

5. Employments which do not bring benefit to society

¹⁹Ibid.

²⁰Muhammad Yusof Musa *Dhikra Ibn Sina* Cairo 1951.

such as gambling, stealing, cheating and involving riba, are to be forbidden.

Here Ibn Sina follows the teaching of Islam.

6. Marriage is enjoined and family life encouraged.

Ibn Sina's statement follows the Islamic Law.

7. Equality between men and women, save in some matters like divorce.

Here he disagrees with Aristotle and states the Islamic view.

8. Restriction of divorce to safeguard family life and the ties between parent and children.

Here again Ibn Sina follows the Islamic tradition.

9. The husband has a duty to maintain his wife and children.

Based on the Islamic Law.

10. The head of state to be proposed by the previous ruler and to be elected by the "Ahli'l halli wal aqdi".

Follows the teachings of Islam.

11. There should not be two sovereigns, except in cases of emergency.

In line with the Islamic tradition.

12. The ruler should uphold the dignity of religion and religious practices.

Follows the Islamic principles.

INFLUENCE OF IBN SINA

Natural Law theories in Western Legal philosophy owe a great deal to Greek political thought and it may be said that the Platonic and Aristotelian traditions were assimilated into the natural law theories of Augustine and Thomas Aquinas through whom they have continued in Western Legal Philosophy. Both Plato and Aristotle were also referred to by Arab philosophers. Aristotle's works were translated into Arabic and it was the Arabic versions which were eagerly read in medieval Europe.

Ibn Sina tried to assimilate the view of Aristotle into Islamic philosophy. He was deeply convinced of the prophetic inspiration of Mohammed (p.b.u.h.) and his authority in regard to the law of Islam. He was also strongly attracted to the Greek philosophy of reason. He therefore set himself to place Islamic doctrine and practice in the frame of Greek philosophy.

He saw the human conflict of the animal faculty and the rational soul as reconcilable and even removable by Aristotle's principle of the mean. The soul endowed with perfect reason and far reaching all-embracing thought strives to "become as it were an intellectual microcosm, impressed with the form of the All, the order intelligible in the All and the good pervading the All." In seeking this wholeness of vision, we also seek God, in whom reason is supreme and knowledge complete. God's knowledge is different from man's, since He also created the objects of knowledge and commands them according to a known order. For this reason God's knowledge does not change, as man's does, with changes in the things known. In short the whole world is disposed and predetermined, known and willed by God. For human society God knew and willed the distinctiveness of man, not only in his reason, but in his need of society and of the help of others. For this mutuality of needs and to permit co-operation in fulfilling them society and civic duty exist. And this continuing co-operation requires a code of law and just regulation, which in their turn call for a lawgiver and regulator. The Prophet (p.b.u.h.) was ordained and inspired to prescribe laws for mankind ensuring the good order of the physical world through government and that of the spirit through philosophy.

The Aristotelian heritage entered Western culture in the 12th and 13th Centuries, mainly through the translations into Latin of the Arabic texts and Arabic commentaries. It was shortly

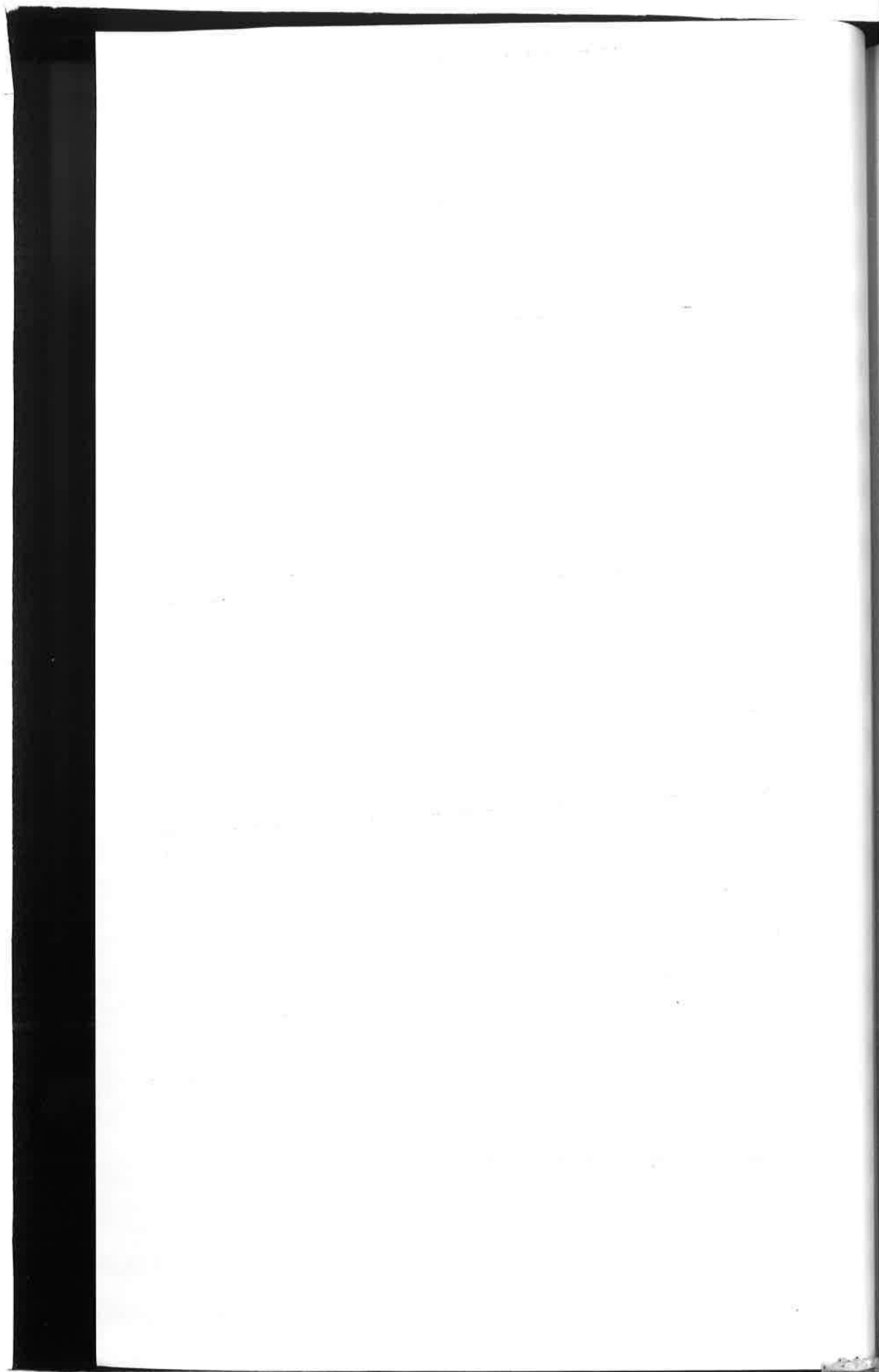
after the first translation of Aristotle's *Politics* (about 1260 A.D.) that it received its re-interpretation in the light of Christian philosophy in the writings of Thomas Aquinas.

For Thomas Aquinas it was not only a question of deciding whether Aristotle's conceptions could be squared with the Christian interpretation of life. It was also a question of interpreting Aristotle correctly. The doctrines which the Muslim philosophers like Ibn Sina and Ibn Rushd purported to derive from Plato and Aristotle were striking at the roots of Christian belief and Christian philosophy. Some following Augustine thought that the challenge could be met by simply restoring the basis of the godly theocracy, by denying the State any right of existence. Thomas Aquinas tried to interpret the teachings of Aristotle in the light of the Christian ideal. In doing so he had to combat and reject the views of the Muslim philosophers including Ibn Sina. Thus the natural law theories of Christian Europe although influenced by Ibn Sina were developed in conflict with his views.

In Islamic tradition itself the views of the Muslim philosophers were given a heavy blow by Al-Ghazzali, who particularly criticised the use by the philosophers of reason in realms which were beyond its legitimate use. The triumph of the orthodox Shariah in Sunni Islam has caused the views of Ibn Sina to be neglected and ignored but recent attempts to rebuild on the principles of Islamic politics and economics may encourage us to return to and appreciate his views.

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RIGHTS OF MENTALLY RETARDED PERSONS IN DOMESTIC RELATIONS*

In the field of mental retardation, traditional and set beliefs of the general public and its casual and indifferent attitude are very difficult to erase. When even legislative provisions reflect prejudice and misgivings, it is not surprising that attempts to alleviate the plight of retardates are often thwarted and hampered. It is enlightening, however, that in recent years legislative innovations in some jurisdictions have begun to confirm national commitments to rights of the mentally retarded.¹

Basic to these new developments is the principle of normalisation which stemmed from the Scandinavian countries. Normalisation in the context of mental retardation represents

"a conscious effort in all that is being done and planned for and with the mentally retarded and their families to come as close as normal living situations as is feasible, considering the degree of intellectual, physical and social capacity of the retarded persons involved."²

Minimum deviations from the norm when treating mentally retarded persons are, therefore, central to this principle, although it does not indicate a fixed standard or criterion of achievement, or a point at which a particular retarded person can be considered to have attained his maximum potential. The normalisation principle thus takes note of the diverse nature of mental retardation. Mental retardates have often been

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¹ For example, the *Education of All Handicapped Children Act 1975* proclaimed in the United States. See D.W. Keim, 'The Education of All Handicapped Children Act 1975' (1976) 10 *University of Michigan Journal of Law Reform* 110.

² G. Dybwad, 'Basic Legal Aspects and Provision for Medical, Educational, Social and Vocational Help to the Mentally Retarded' [1972] *Australian Journal of Mental Retardation* 97, 104. See also C. Judge, *Retarded Australians*, Melbourne University Press: Melbourne (1975), 44 and R.H. Woody, *Legal Aspects of Mental Retardation: A Search of Reliability*, Charles Thomas: Illinois (1974) 106-110.