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Chapter 11: The Mutual Relationship between the People and the Government (Part 2)

A Review of the Previous Discussion

During the previous meeting in which we discussed the mutual rights and duties of the people and the government, we made a short introduction in this context. It was pointed out that for two reasons right and duty are interdependent and proportional to each other. We said that one type of relationship between right and duty is that whenever a certain right is established for a person, this right is over another person, and in principle the concept of right requires such a thing. For example, if a wife has the right of sustenance over her husband, as she does, its correlative is that the husband is duty-bound to provide sustenance to her.

By proving the right of one party, the duty of another party will also be proved. This is a kind of correlation and reciprocity between right and duty; right for one party and duty for another. The second meaning of right–duty correlation is that if in social relations relationship between two persons, two sensible beings a certain right is established for a person, in return, a duty will be placed on his shoulder. In the first type of correlation, the establishment of right for one party necessary means the establishment of duty for the opposite party, but here when a right is proved for a person, a duty alongside the right will also be proved for the same person.

That is, once he takes something, he must give something else in return. In a bilateral relationship one cannot enjoy benefit without the other acquiring another benefit. One cannot only have right while the other has duty only. If person A has a right over person B alongside the right he possesses, he has also a duty toward person B that he has to fulfill. Even in the relationship between father and son, if the father has right over the son, he has also a duty toward his son. It is not possible for him to have a right over his son while having no duty toward him. Here, right and duty are correlative in a person.

The Relationship between Right and Justice

With respect to the second meaning, we have mentioned that whenever a right is proved, a duty along with it will also be proved for the claimant of right, once we consider the relationship between the people and the government and set a right for one of them, alongside this right that is acquired, there is also a duty that is to be shouldered. If the government or the ruler has a right over the people as it or he does, along with this right, he also has to accept a certain duty toward the people.

It cannot be accepted that the ruler has right over the people while having no duty at all. Meanwhile, if the people have any right over the ruler as they do, along with this right, they have to accept a certain duty toward the ruler. It is not reasonable that all rights are only for the people while having no duty toward the ruler. If this relationship is balanced that is, a right which is to be proved for a person has a kind of harmony and balance with a duty which is to be proved along with that right in that case, a just relationship will be established. In principle, right [haqq] is intertwined with justice ['adl'] because the truth behind justice is that the right of every person should be given to him.

If this right is linked with a duty which he has toward another and this right and duty are proportional and balanced, the relationship between them will be just because they are of the same weight. Balance means to be of the same weight; to be equitable. If the duty of one party is supposed to be heavy for example, he has to pay taxes, comply with orders, endure every hardship, and shoulder the expenses of the ruler, his apparatus and government with all their extent but having no right over the ruler, this relationship is not just.

Justice means proportionality of the two parties; balance and equality of the two opposite rights. If this proportionality and balance between right and duty is observed, justice will be established. As shown in the history of philosophy, the discussion on justice has been made from the time of Socrates up to now, covering a period of more than 2,500 years. So far, in this context there has been much discussion and so many books been written that to make a list of them constitute a book itself. Even nowadays, perhaps there has not been a day when no article, treatise, or book which is related to justice in a certain way is even published. This affair, on one hand, shows the degree of importance of the issue while on the other hand it indicates that this issue has so much discussion that after 25 centuries of debate and discourse about it, it still has ambiguous angles and room for discussion.

One of the discussions in this context is the relationship of justice and right. It seems that what is more confirmable and has also been mentioned by some others is that the relationship between justice and right is an objective one. Justice means to give right. Justice is nothing but that the right of everyone should be given to him. But since right is bilateral, whenever a right is proved, there is also a corresponding duty. If this right and duty which are established for a person are balanced, they will be just and if they are not proportionate that is, the right which is considered for a person is more than the duty which he has to shoulder, or on the contrary, his duty is more than the right which is proved for him

this relationship is unbalanced and contrary to justice. According to this viewpoint, the concepts of justice and right are inseparable. In fact, they are not two concepts and two discussions for us to say, "What is the relationship between justice and right?" Therefore, if there is any ambiguity surrounding the concept of right, the same is also applicable to justice and on the contrary, if there is any ambiguity surrounding the concept of justice, the same will also be applicable to right.

The Criterion in Determining Right the Viewpoint of the Natural Law and the Positivist Law

Now, this issue arises: how can the right of everyone be determined? If it is proved that someone has a right, to give that right and along with it, to establish a duty for him is justice. Yet, the ambiguous point here is that how these rights will be proved. That is, from where can we know what the right of a person is? How and who has to determine it? This issue is so complex and as far as I know, in spite of persistent and ceaseless efforts made in the academic centers, universities and academies of the world, the different schools of law have not even arrived at a relative consensus in this context as to what the criterion of right is and from where right arises. Of course, among the different views on this issue, nowadays in the academic circles, institutions and universities, there is one theory which has many votaries, but this does not mean that the discussion is finished and has arrived at the conclusion and the case is solved. In fact, ambiguity still remains.

In general, as to whether what right is and where it emanates, different schools have been formed in the philosophy of law. Among them is the natural law school. On the basis of this school, it is said, "It is the natural right of this person to do these works," or "The vital right is the right of freedom while some other rights are the natural rights of every man." Of course, this term is among the Western imported terms which have become part of our terminology. In the Islamic concepts, there is no talk about the "natural law." Even in one verse, one *hadith* and narration, or in a religious text, you cannot find anything in which there is talk about "natural law." The term "natural law" emanates from one of the specific schools in the philosophy of law, viz. the natural law school. Of course, the concept has been expanded and used in other areas.

Since time immemorial, there have been those who believe that every man has naturally specific rights and use the same term (natural law). But there is difference of opinions on the interpretation of "He has naturally these rights." What does "He has naturally this right" means? Sometimes, they used to interpret that nature gives specific rights to man. In the old texts of ancient philosophies, this type of interpretations could be found frequently. For example, it was said, "Nature has given the right to life and the right of food to every living creature. Nature has given right to every creature which is in need of food to eat food. Nature has given right to every creature which is in need of air to breathe air.

The term "natural right" is pleasant as a literary composition, but in reality it is questionable. What is "nature"? What for does nature give right? What does nature possess to give to others? Does one who

is given right by nature have right and does he take it from nature, or he has no right and nature gives it to him?! If the expression "Nature bestows right to someone" is examined closely, we can observe its ambiguity. Is nature a sensible being that gives something to a person? Does it have prerogative to give right to a person, or not? In retrospect, assuming that nature is a being that has a prerogative and gives power and right to someone, what is the need for us to obey it?

How and which power persuades us to respect this nature's bounty? Now, granting that nature gave the right to life to a creature, why are others obliged to respect this right, not to commit suicide and even not kill animals for no reason? We asked this because we said earlier that there is no sense in saying that a right is proved for a person while in return, others are not obligated to observe this right. Once the discussion reaches this point, different views are expressed by distinguished authorities and profound philosophers in answering this question.

Some of these philosophers, believing in the natural rights, say that this right is God-given and when you say "natural right" it means God-given right. Yet, as you know, among the philosophers and the rest of people there are those who do not believe in God. So, what is the sense of talking about natural right which means God-given right? On the other hand, once we claim that a certain natural right is given by God, we have to prove where and when has God said, "I have given this right." We can even say to ourselves that God has certainly given these rights to certain people. Instead, we should have proof for it.

Some others have said that the natural rights are the rights which the intellect proves. And a number of them have added that in a sense, these are the same rights given by God which the intellect discovers. At any rate, there are many discussions here with which we have no time to deal at the present, and besides, doing so has little practical outcome and I just want to mention them. Anyway, the most fundamental discussion which we should have in the context of rights is the same discussion on where right essentially emanate from.

Because of these problems and ambiguities existing in this context, a view which is diametrically opposed to the natural rights view upholds that right has no fixed root at all. Right has neither root in nature nor rationality, nor is it given by God; rather, all rights are contractual. In order to conduct their social life in a manner that ensures their interests, peace and security reign, and chaos and tumult are eliminated, men have concluded a series of contracts.

An array of demands is the demand of all. Everyone has these demands and no one can afford to set them aside. This kind of rights has taken the label "natural rights" for itself. Every person wants to be alive. No being can afford to be heedless of its life. As such, they have agreed that this right be recognized as a natural right. Once a creature is alive, it has to take food. So, the right to nourishment is also a natural right which all human beings are in need of. In action, everybody has accepted this kind of rights and no one can deny them. The fact that every person is in need of a house and that he has to dwell in a certain place is undeniable. In reality, there is an implicit and unwritten agreement that since

all persons have these needs, it follows that these rights shall be proved for them. The result of this agreement is the same natural rights.

Thus, natural rights, in accordance with their contracts, mean that they have been given neither by nature, God, nor reason. They are rather demands which exist in all people who cannot deny them. In the positivist law school, natural rights are acceptable only in this sense and all rights are contractual. In the philosophy of law, the positivists believe that all rights are contractual. As in the philosophy of values and the philosophy of ethics, they also believe that the values goodness and badness are in accordance with the contracts of the people and society. By accepting this foundation, they are no more in need of explaining why this right exists because the people themselves have accepted it. As such, the acceptance of contract as the foundation of rights leads to the acceptance of democracy.

But this question still remains: If some people somewhere did not accept the said contract, what would happen? In reply, the positivists say, "In the relationship among individuals of a society, if a person does not accept it, he has to follow the majority. When in a society the majority of people have accepted that a certain right is proved, if a number of them would say, "We do not accept it," there is no alternative but for this number to accept it also, otherwise they oppose democracy. There is no other way. Within a society, whatever the majority say should also be accepted by the minority. Of course, as much as possible, one has to strive so that the rights of the minority are not eliminated. In any case, the principle is that whatever the majority accepts should also be accepted by the rest. The positivists solve this problem in this manner in the domestic law and within a society.

Yet, in the relations among societies and international law, when there is difference between two societies and two states (of course, the state as the representative of a society), who shall determine the rights? It is here that international conventions and agreements are formed. If the representatives of states agree and sign the agreement, that common right shall become binding for them, otherwise no one has any right over another. What are dominant nowadays in international relations and on the basis of which international disputes are solved and cited as the legal basis in international courts are the same conventions such as the law of the seas, law of the space, outer space law, and the like.

Of course, in practice, when the majority of countries or the superpowers, accepted a thing, they also urge the rest to accept the same. Theoretically, international law is based on agreements between two societies or among many societies. Of course, given this assumption, the problem also exists usually governments are not representatives of their people and are voted for under the influence of different factors. In this case, what is the need for the people of those countries to comply with those conventions? For the meantime, we are not engaged in criticizing these theories, and the main point is that once it is related to two persons, they have to agree upon and accept a matter together.

But within a society since there is the possibility of opposition to arise and general consensus cannot be achieved, the majority vote is the criterion. In international relations also, the law among nations is established through the agreement of their representatives, viz. the governments. Of course, as to the

case where certain people have the right to set rights for all societies and impose the same to others as the international rights, there are different theories. In this context, some were extremists and others exaggerated. Among the legal experts there are those who believe that a number of people may promulgate laws and impose them on others especially in the case of the existence of violation of the human rights.

Regarding human rights, there is no need for the approval of all states. If a state opposes and does not sign a convention, or for example, does not sign the 1948 Universal Declaration of Human Rights, others have the right to impose the articles of those conventions or the Declaration on the said country. This theory has been recently mentioned in international law. 1 The ramifications of all these can be traced to the philosophical theory which states that rights are conventional affairs and in accordance with contracts. On the contrary, some believe that rights are real affairs which are discovered by the intellect, endowed by nature, or given by God (with the different views mentioned in the context of natural rights, rational rights and divine rights).

The Viewpoint of Islam on the Criterion of Determining Right

The question raised here is: What is the view of Islam in this regard? That is, if we want to attribute a theory to Islam in this connection, shall we say that Islam is advocating the positivist law school, the natural law school, or the rational law school? To answer this question within the given time is not an easy task, but we have to do so anyway.

One of the most fundamental differences between the Islamic perspective and the perspective dominant over the Western culture is regarding the realness or otherwise of values. According to the Islamic perspective, we have a set of real values which are not according to convention and contract. They are rather anchored in real interests and above personal tastes, contracts and conventions and even international treaties. Just as for example in medical issues, once a person is sick, in discovering the medicine for a disease, physicians make an agreement among themselves, forging a contract that from then on the said ailment shall be treated in a certain specific way. Are physicians like that? Or, are they looking for its real medicine? That is, whether we know it or not, there is a material which is very effective in eliminating the sickness. And the task of the medical researchers is to discover the relationship and not merely to arrive at a consensus among themselves. They do not create relationship between medicine and treatment, between observance of the principles of hygiene and health nor do they sign a contract. Instead, by conducting different tests, they try to discover those relationships.

In the realm of values also, according to the Islamic perspective, there is a set of general, fixed and absolute values which are based on real affairs and are not according to contracts. We have to discover these general, fixed and absolute values through reason or another way (revelation). The pristine moral values are like so and they do not acquire value through a contract.

The same is true in the case of rights. In reality, rights discover the existing real relationships in the lives

of people. The formulas, which can organize these relationships in such a way that the felicitous life of man is ensured, are real formulas that must be discovered. Of course, one of these formulas may, for example, consist of ten elements, nine of which we have to identify and one is unknown to us, and then to see where there is exception. It is because some of these relations and their organizing formulas are so complex and thus, to discover them is equally problematic.

Consider a person who has taken the trouble to plant a seed or seedling on land which does not belong to others. Then, through his efforts he has succeeded in making a fountain there from which he used to water the seed or seedling until it has finally turned into a fruit–bearing tree. This person has taken trouble during the different stages of planting, maintenance and watering until his efforts have borne fruit. At this point, an issue called "ownership" is raised. As this person has made an effort and produced a fruit or a fruit–bearing tree, the welfare of his life is that he has to benefit from it. Now, if another person takes this tree from him and does not allow him to benefit from it, there is no doubt that his right is trampled upon. From where has this right been acquired?

From the troubles he has taken in the process. In a relationship of this person with another person who wants to benefit from the product of his labor, if this relationship is organized in a correct manner such that both equally benefit from the product of labor of each other, in that case it will be a just relationship. It is because a right is established for each of them and alongside the right which each of them has, a duty is also established to respect the right of the other. This is a simple formula which can be expressed in this manner: Anyone who produces a thing has the right of ownership of it.

But the issue is not always as simple as such and in intricate social relationships one cannot easily make judgment. In the same example, if we add other factors, determining the rights will not be as simple as before. If we plant a tree in a neighboring house and this tree arbitrarily affects the house structure, deprives the house of the sun rays, or its branches and twigs penetrate into the house and occupy a space of the house, in this case to what extent do we have the right to benefit from this tree?

Here, a new relationship is raised which affects the determination of rights. It is true that with respect to this tree, we have taken trouble, but through which we disturb another person because under the existing situation, taking benefit from this tree gives injuries to another person, and these things must be taken into account in a bilateral dealing. The element of the first formula since I took trouble, it follows that I have the right to benefit from it alone is not enough. For, here a new issue is also raised and that is the complex links among those elements embedded in the right.

Sometimes, social relations are so intertwined and produce reciprocal relations that to organize which necessitates an intricate formula and to solve them is not easy. In cases where the relations are fixed and simple, by making use of our reason and taking advantage of the experience of a person or the experience of others and sometimes scientific formulas, we can easily arrive at an answer which can easily be accepted if we mention it in any academic gathering or explain it to any reasonable person. In these cases which are simple and basic legal issues, our intellect is capable of discovering the

relationship between right and duty and through rational proof we can argue in establishing a right or duty. But once the relationship becomes complex, even the expert and well-experienced legalists will be stunned.

In some legal cases, we can see that for many years and centuries, the lawyers have discussed them and notwithstanding it, they have failed to arrive at a decisive conclusion. In any case, there are some cases in which to find the final solution and a clear answer which is explainable to everybody is very problematic, nay something which is nearly impossible. It is in these cases that we, in the parlance of our Islamic culture, say that the intellect here can not understand. But it does not mean that they cannot be understood. It rather means that through our usual and common reasoning and the conventional skills at our disposal, we cannot easily discover the relationship and identify the exact formula that completely specifies the effect of each of the factors.

In these cases, because of the complexity of the relationships as well as the multiplicity of the factors and the uncertainty of the coefficient effect of each of those factors, through their common intellect human beings cannot have a correct, certain and identical judgment. According to our Islamic culture, we believe that in such cases divine revelation should assist humanity. Seeking the assistance of divine revelation does not mean that it will say something which is contrary to our intellect. It rather means that the divine revelation will compensate the shortcoming of our rational understanding. If we have information about all things and can discover all factors and determine the extent of their effects, in these cases, we can understand by ourselves. However, owing to the deficiency of the conventional skills we have, we cannot exactly discover these factors and the magnitude of their effects, and specify the exact formula for them. At this juncture, we say that our intellect cannot grasp them, and God (through the revelation) should determine them.

The Fundamental Difference between Islam and the West on the Criterion of Determining Rights

The result is that rights are actually founded upon real bases and substructures. In other words, there are laws which are consistent with real welfare and corruption. That is, in the real world there are real interests and corruptions on the basis of which we have to determine the rights. Yet, in all cases we cannot discover those real interests and corruptions because an important part of the interests and corruptions in the life of man is related to his soul, spiritualities, human nobility, and eternal and otherworldly life with respect to which we do not have information and knowledge.

This issue that is, not considering spiritualities and heedlessness to the interests and corruptions of the otherworldly life is the second point of the difference existing between us and the Western culture. Nowadays, in all modern Western countries in the world, we cannot find a legal expert who takes into account the spiritual and otherworldly affairs and the eternal life in enacting laws, rules and regulations.

Whether these legal experts do not believe in the otherworldly life, or even if they believe in it, they regard this belief as devoid of any influence in the realm of legislation, because, in their opinion, the otherworldly life has nothing to do with the material worldly life. At most, we have two stages of life which are independent from each other. There is one material worldly life whose laws we have to enact.

The other is the otherworldly life which, if it ever exists, is related to the world after death and at most, the thing we should do for it is for us to go to the house of worship and engage in worship. The only impact of the belief in the life hereafter is that people should go to mosques to pray, to gather in the husayniyyah2 to engage in chest-beating so that these acts become useful for the Hereafter. Yet, this belief has nothing to do with man's socio-political relations! The separation of religion from the world, the confinement of the jurisdiction of religion to the personal relations of man with God, and the non-interference of religion in organizing the socio-political relations is the same secularist outlook which is dominant today in the Western world.

Unfortunately, our new intellectuals also want to drive us toward this outlook, change our Revolution into something else, and separate us from Islam. This subject is the fundamental difference between the Islamic viewpoint and the Western culture. Our belief is that our worldly life has a causal link with the Hereafter. In our belief, whatever voluntary act we do in this world, including even breathing, winking of eyes or uttering a word, can have repercussion on our otherworldly life because each of these acts is either lawful or unlawful. If it is lawful, it can have a positive effect while if it is not, it can have a negative effect. This is true even in the case of a mere glance.

There is so much difference between this outlook and the secularist outlook which argues that if ever there is the Hereafter, none of the economic, legal, political, and social issues is related to it in any way. The Hereafter is only an emotional relationship of man with God. The person who believes in the Hereafter goes to a house of worship and performs some devotional rituals. That is all. This is the very essence of religion.

The other issues are either among the secondary parts of religion or have no link to it. This kind of view toward religion is very different from the religion which states that the winking of eyes has effect on your Hereafter, let alone speaking about family, marital, parents-children, and social relations and the relations between the government and people. We believe that all of these have effect on our otherworldly life.

Of course, all of us accept the essence of this case because we are Muslims, though we do not know the extent and quality of their effects. We know that our winking of the eyes can also have an effect on our otherworldly fate, but we have no way of discovering as to how it affects and which glance has a positive effect and which one has a negative effect. One side of this relationship which is the Hereafter is beyond the reach of our experience. Through experience we can discover the medicine and treatment of a physical sickness and say that this medicine has relation with such an ailment. Why? It is because in this regard, we have many tests and have witnessed the relationship between two factors. As such, we

pass a judgment that there is a relationship between this medicine and that sickness. But how can we test the impact of our behaviors in this world upon the fate of our life in the Hereafter? We have not yet gone to the Hereafter and those who have gone there did not bring any news to us.

Now, if our social affairs which are the cradle of individual, familial, political, and international rights can play a positive or negative role in the otherworldly life and in the felicity and wretchedness in the Hereafter, this question is asked: Who should discover this relationship and those rights? As far as we are concerned, we have no experience in this regard; therefore, in order to prove and measure it, we have no option but to seek assistance from divine revelation.

He who is acquainted with this world and the Hereafter, and all things are equal to Him, knows what the relation of each of our actions with our life in the Hereafter is and what the extent of its effect on the felicity or wretchedness there is. We thus say that the religious law should determine the legal relationship. This does not mean that the religious law's determination is idle, baseless and subjective. The religious law's verdict assists in compensating for the deficiency of rational perceptions. In relation to the realm which is beyond the grasp of our common intellect, God the Exalted, through the knowledge, wisdom and grade He has for the universe, enlightens and guides our intellects.

The Religious Law's Remarks on Dealing with the Relationship of Actions with Welfare and Corruption

The issue which must be noted is the manner of the religious law's guidance and expression. Expression can show the formula to us and states the extent of effect of a certain action in our otherworldly life if it is like this, it will have this extent; if it is like that, it will have that extent. Explaining and understanding are so difficult in this method. Since it needs scientific terminologies and similar to elucidation of formulas and precepts in physics or mathematical equations to common people, it will be a difficult task. However, in expressing the said relations, if symbols and symbolic expressions are made, the problem will be solved. Then, for each of these symbols appropriate names such as obligatory [wajib], forbidden [haram], recommended [mustahabb]... etc will be selected depending on the magnitude of the positive or negative effects of those actions on the otherworldly life.

Thus, the religious decrees such as *wajib* and *haram* are a set of symbolic concepts, but not senseless and baseless symbols. They are rather symbols to express a set of real and fixed beliefs just like mathematical symbols (numbers, letters and signs).

These decrees are a set of conventional and symbolic affairs. Yet, since they are not idle and mere conventions but based on real welfare and corruption, each of them bespeaks of real affairs and true relations, actions and their effect in the Hereafter, which they have to discover with much effort. Since we ourselves do not have the capability to discover these relationships, the religious law, while unraveling them for us, has engaged in stating right and duty by means of these simple symbols,

stipulating that this is obligatory and that is unlawful, or this is a right and that is a duty, and the like.

Hence, we believe that right is based on a set of real substructures; that is, welfares and corruptions really exist in our life and are realized as the effect of some actions. As such, neither the view of those who say that nature gives right to man is correct nor is the view of the Ash'arites who say that it is a divine right and since God has said that it is good and right, it has thus become good and right. Nature is an ambiguous concept, unscientific and interpretable diversely. For this reason, the natural law theory has no clear explanation. Nevertheless, the view that it is a divine right in the sense that without any basis and out of domineering God has commanded it so is equally not correct. God has given orders but His commands are symbolic terms for a set of real and essential welfares and corruptions. God the Exalted has unraveled those welfares and corruptions and placed them at our disposal.

The Exigency of Facilitation

Among the factors that must be considered in determining the limits and expression of right and duty is the issue of facilitation of implementation. There are so many cases in which theoretically one can identify the welfares and ensure them by enacting a law, but in practice the same law creates much trouble and the activities and lives of people are put in abeyance. It is here that God the Exalted adds another factor called "yusr" to the influential factors in the legislation, saying:

Allah desires ease for you, and He does not desire hardship for you. (2:185)

There may be many things which if a person can abstain from, it will give him a better health condition, but if all people want to observe them, they will be subjected to trouble and their lives will be in abeyance. For, from morning till night, they have to think only of health issues and have no more time for work and occupation. In such cases, He does not issue decree on the necessity of abstaining from them; rather, He says that it is necessary to abstain from them if they are harmful to all under common circumstances. As such, some things may be harmful, since people will be put into difficulty, there will be no strict ordinance concerning those things. This is technically called the exigency of facilitation [maslahat-e tashil].

In addition to the factor of proper understanding of the welfares and corruptions, other factors such as easiness in practice must also be considered, and then, through adaptation and modification that will be undertaken, a law is enacted. This is beyond our analysis and elucidation. He who created man knows better than anyone else to what extent under the different conditions of life, this man can endure and tolerate, and if something is obliged to him, to what extent it will arbitrarily affect other things pertaining to his welfare.

In sum, it is true that legal concepts are conventional and have no equivalent terms, but they are based on a set of real welfares and corruptions which will be realized in the human life. Many a time, the enactment of a law led to the emergence of chaos or paved the way for the emergence of some spiritual and emotional, or physical diseases. Many a time, a law led to improper training or cold–heartedness of children, or made people devoid of feelings, or provided for the rearing of criminals. All of them are real factors which will be realized in the world outside the mind. The overall trend of the effects among these factors and elements embedded in this formula will be considered, and the symbolic concept called "right" [haqq] or "law" [qanun] (the legal or political concept in different cases) will be enacted for it.

God as the sole original bidder and forbidder

The important and logical question is this: Who has the right to bid and forbid? Is he other than the One Who has endowed life to man? What is the right of others to say to me, "You have to do this"? Are they the owners of me to say, "Do it"? No person has the spontaneous right to command another person. Only God has such a right because He is the Owner of the entire universe. In accordance with the ownership that God has in relation to man, the legislative guardianship, right of legislation, and to bid and forbid also belong to Him.

God the Exalted Who is our ontological Lord has also legislative Lordship over us. Since our existence depends on Him, it is He Who can say, "You have to do this" or "You must not do that." Other than Him, who else has the right to do it? This bidding and forbidding, and any kind of determination of duty, require one's ownership. Here, there is no more room for this question: Who has given this right to God? This is the right of God's Divinity or Godhood. Has anyone given Divinity to God?! Divinity is an Essential Attribute of God. This right of Lordship and legislative guardianship are also requisite of His Divinity, and there is no need for someone to give this right to God.

Of course, God does not give order in vain and without wisdom. In fact, whenever He gives order, there is definitely something good in it. According to this viewpoint, the legal concepts and decrees in religion are two sides of the same coin; one side of it encompasses bidding and forbidding, credibility, commander and agent, servant and master, while the other side covers the real goodness or evilness associated with those affairs. Thus, the bidding and forbidding of God unravel the real good and evil the good and evil that constitute the edifice of rights.

In the act of proving, it is this bidding and forbidding of God which confirms the rights, and the determiner and bidder for us. No other creature can command us. The expression "divine rights" is correct, but not in the sense that may create misunderstandings; that is, to be construed as idle commands and domineering orders. God does not need to compel anyone. The commandment and prohibition of God are meant for our welfare and out of His grace and love. God the Exalted, out of kindness to His servants, wants us to attain perfection, thus making those ordinances and prohibitions. So, it is a divine command, but it is neither a domineering command, nor is it baseless and senseless. It

is rather based on real goodness and evilness.

Questions and answers

Question: Is the rule of right-duty correlation related to the human society or related to the relationship between God and man? How are the divine right and duty toward mankind? Does the right of God over people create a duty for God?

Answer: To answer this question requires a detailed discussion which must be done in its proper time, but here we shall suffice ourselves to a concise answer: In relation with God the Exalted, we have no right whatsoever over Him and He the Exalted has no duty toward us. Out of His grace and benevolence, God the Exalted has set duties for Himself toward His creatures on certain cases; that is, He has set rights for His servants over Himself. For example, God's saying, "He has made mercy incumbent upon Himself, (6:12)" does not mean that we have to set the duties of God or acquire a right. However, out of His grace, God the Exalted has made it incumbent upon Himself to be merciful to His servants.

As He says, "And it was a must for Us to help the faithful, (30:47)" in essence, the faithful believers have no right for God to assist them. The point is that for any good deed done by a person, God shall reward him, but for God to definitely assist him is something which neither the faithful believers have such a right over God nor is it a duty of God toward them. However, out of His grace and benevolence, He has made it a right of the faithful to be assisted. As a result, it is incumbent upon Him to observe that right. Therefore, originally, neither we have any right over God nor does God have any duty toward us, but His grace demands that He has to set a right for His servants and to make it incumbent upon Himself to respect it.

Question: In relation to the foundations of law, it seems that even with the acceptance of the basis of "real goodness and evilness" in law, some laws such as traffic and driving regulations will be enacted on the basis of social contract. Now, the question is: What is the limitation and boundary of real and contractual laws?

Answer: A part of laws and legal rules is based on social contract. Yet, our emphasis is that the substructures of law are real goodness and evilness. As to what extent these substructures unravel those real goodness and evilness once they turn into superstructures and are crystallized into current laws, there are different stages. In reality, what represents the substructure of law that is the same welfares can be realized in certain cases through many ways. That welfare is a real affair but to identify the way of realizing it into the current laws is a contractual affair.

For example, the traffic and driving rules are meant to prevent accidents and disorder in driving. This welfare is a real affair which can be obtained through various means. One way is, for example, for the drivers to drive along the left side of the road as in Britain and Japan. The other way is for all drivers to

drive along the right side in most countries such as ours. To drive along the right or left side of the road has no goodness or evilness in itself and it depends on the consensus in a society, for it makes no difference whether everybody will move along the right or left side of the road. In any case, accidents will be avoided. But if one moves along the right while another one moves along the left side of the road, accidents and collision will happen and there will be heavy traffic jams.

In summary, there are cases in which the realization of the welfares and corruptions is possible through different ways. However, the social order demands that one of them must be chosen so that everybody will observe it. In that case, it is the legitimate ruler who is the determiner of that way and it is also obligatory to obey him.

- <u>1.</u> It is mentioned as the general principles of law. Technically, "general principles of law" is said to refer to a set of principles which no country, including the non-signatories to pertinent conventions, is ever permitted to oppose and make a contrary step.
- 2. Husayniyyah is a place for the remembrance of the third infallible Imam, the grandson of the Prophet (S), Imam al–Husayn ('a). [Trans.]
- <u>3.</u> Ash'arites ['asha'irah]: the followers of Ash'arism, a school in Islamic scholastic theology [kalam] founded by Ab®'l– Hasan al-'Ash'ari (d. circa 330 AH/941–42 CE), which are aimed at defending the basic principles of the Ahl as–Sunnah, or attempting at a rational justification of their beliefs. One of its main doctrines is that acts are not intrinsically good or evil, i.e. the goodness [husn] or evilness [qubh] of deeds are not intrinsic, but determined by the shari'ah. [Trans.]

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