

Session 13: Fundamental Difference in the Approach to Law between Islam and the West

Law is not supposed to endanger the interests of society—material or spiritual, worldly or otherworldly. Once a law is detrimental to any of these interests, it is not ideal and cannot meet the needs of man and society. Discussions have been held, but since there are still doubts in the minds of some professionals and authorities, it is expedient to further explain certain concepts in this regard.

Relationship between law and individual freedom

Mass media and public discourses today emphasize individual freedom as an issue above law and consider any law which restrains individual freedom as not credible. In order to clarify the issue further, we shall deal with some subjects as preliminaries to the main topic. By doing so, it will be easier to grasp the authentic views of Islam.

Western culture is based on a set of elements. The first pillar of this culture is a trend called “humanism”. Inclination toward humanism in Europe and in the latter part of the Middle Ages was brought up through renowned writers and literary men of the time, such as Dante¹ of Italy. In reality, it was a return to the pre-Christian era. As we know, Christianity was born in the East, in Palestine in particular.

Prior to the coming of Christianity in Europe, European societies were idol-worshippers. The most important empire at the time was the Roman Empire consisting of the Byzantium (present-day Turkey) and Western Roman Empire (Italy). With the exception of Jews, these people were all idol-worshippers. After the coming and dominance of Christianity in their society, distortions entered Christianity and, in one way or another, elements of idol-worship were adopted and European society accepted such a form of Christianity. An example of distortions in Christianity is the Doctrine of Trinity and erecting of statues of Hadrat Maryam (Saint Mary) and angels in the churches. As a result, these churches are very similar to the idol-temples of the past.

Thus, Christianity in the Western world became a distorted form of Christianity which replaced polytheism. In reality, the government there was a worldly government devoid of spiritual values, though established in the name of Christianity, under the garb of divine rule for a heavenly and celestial mission. Under this guise with 'celestial' and 'heavenly' slogans, they committed such heinous crimes, that people feeling suffocated by these injustices and crimes, eventually returned to the life prior to Christianity.

The humanist thought, in truth, emanates from this return to man in place of God, this return to earth in lieu of heaven, and this return to worldly life in place of the otherworldly.

This is the kernel of humanism, which insists that we have to replace God with man. With the spread of the prevalent literature of the time, and through the efforts of the pioneering humanist writers such as Dante, the famous Italian poet and author, this trend gradually gained currency in all Western countries, and was propounded as a pivot with a wide array of dimensions and angles. Therefore, humanism is the mother of all other trends, which collectively constitute Western culture.

When we say "Western culture", we do not only mean the west in the geographical sense, nor all the people living in the Western world, because there are those who have wholesome religious inclinations and other schools of thought. What we call "Western culture" is the culture of societies that stride toward non-divine values and atheism, for in some Eastern countries like Japan the same culture may also be dominant. So, we will focus on "westernized societies".

Law in the humanist and liberal approach

The root of Western culture, thus, is atheism and disbelief in God who has been removed from the mind of man. God is replaced by 'man' who has become the epicenter of all values. Anchored in this thought, values are created by human beings and cannot have any reality beyond the ideas of human beings. The law becomes something enacted by man and none else has the right to determine it. It is not God but human beings who chart their own destiny.

These are the main elements of humanism which led to the emergence of other trends that gradually grew from the same root. Two of its extremely important trends presently pitted against Islamic culture are secularism and liberalism. Naturally, when God is removed from the life of man, religion as a matter of course will have no role in the serious issues of life. Therefore, religion must be removed from the social scene and the realm of political and legal matters.

On the basis of this thought, even those who intend to formulate values in the name of religion, have to consider them only for their houses of worship and personal life. That is, in reality, these values belong only to the private and personal lives of individuals and not to their social lives. This separation of religion and politics is among the serious issues of social life and is called "secularism". Following in its wake is the other product of Western culture called "liberalism".

Once the axis of all values is man and no one else determines his destiny, it must be stated that man can do whatever he likes, and this is absolute freedom or liberalism. However, since there will be chaos if every person has absolute freedom in life so the need for law in society is accepted to prevent chaos due to extremism in following desires. After the establishment of order and the elimination of chaos, there will be no more need for law and every person will be able to do whatever he wants.

The onslaught of Western culture and its confrontation with Islamic culture

It can be observed that humanism finally ends up in secularism and liberalism, and these two constitute the main elements of Western culture. Whenever there is the reminder, "Beware of the cultural onslaught of the West against your culture," it refers to secularism and liberalism. This culture is flourishing in the West, and with the industrial and technological advancements, it is continuously and extensively attracting different societies and other countries. Sociologists rightly propound that Western culture is also exported with the export of its technology. This is a fact which must be noted by developing countries.

At this point, the question is: Can technology be accepted without the acceptance of its underlying culture? Presently, it must be stated briefly that along with the export of technology, Western culture is also exported to other countries, and more or less, all societies have been influenced by this culture. Even our Islamic society and other countries are not immune from this influence. (Of course, this external influence has been the result of complacency in preserving pristine Islamic values, and not because of the impossibility of distinguishing the two sets of values from each other.)

Unfortunately, we witness today forms of eclecticism in different classes of intellectuals which have paved the way for an eclectic synthesis between Islamic and atheistic cultures. This synthesis, however, assumes different forms at all levels. Western culture dominates in some cases, while Islamic culture dominates in others. Western culture has unfortunately fostered a musty cultural atmosphere and the clear cultural atmosphere of pristine Islam cannot be seen in any part of the world.

In our opinion, the cultural space of the Islamic Republic of Iran can and must clearly exemplify the Islamic culture and remove the dust of alien cultures. Such a capability exists in this political system and since the people offered everything they had for the sake of Islam and the Islamic culture, the Islamic Revolution poses as the greatest threat against Western culture. The Research Department head of the Washington Institute for Near East Policy, recently said, "The Islamic Republic of Iran is an ideological threat with an exceptionally strategic location."

Obviously, what they are afraid of and regard as a serious threat for them is not economic in nature because their economy is stronger than ours. It is not a military threat either because they have a military power the like of which, quantitatively and qualitatively, does not exist in other countries. Instead,

they are afraid of the intellectual, ideological and cultural potential of the Islamic Republic of Iran why they explicitly declare the Islamic Republic of Iran as a threat with unlimited and unique geographical advantages. As such, they leave no stone unturned in undermining this system, explicitly declaring that the *wilayah al-faqih* system cannot be penetrated unless *wilayah*, which is its axis, is toppled down.

The clergy and structural framework of Islamic culture

The essence of Islamic culture is God-centeredness in contrast to man-centeredness. Let us ask a few basic questions here: Should God be the criterion of values, or the desires of man? Does real sovereignty belong to God or the people? Does the process of thinking, thought, politics, law, and other aspects of our lives belong to God, or are related to the carnal desires of man?

I know that stating this point has some unpleasant repercussions, but the greatest responsibility of the ‘*ulama*’ today is to elucidate the fundamentals of Islamic thought, so that by studying different views reflected in books and periodicals, people can distinguish the views derived from Islam and Islamic sources from others, and thus, the boundary line between infidelity [*kufir*], polytheism [*shirk*] and Islam become clear, and the proponents of atheistic and eclectic thoughts be distinguished from Islamic scholars.

This is the basic and main task of the ‘*ulama*’, and in this regard the Holy Qur’an says that should learned men not expose religious innovations and reveal the truth, they will incur the curse of God, the angels and those who are entitled to curse:

﴿أُولَئِكَ يَلْعَنُهُمُ اللَّهُ وَيَلْعَنُهُمُ اللَّاعِنُونَ﴾

“They shall be cursed by Allah and cursed by the cursers.”²

So, our main duty is to clarify the concepts and identify the boundary between Islam and *kufir* and those ideas which contain eclectic and synthetic elements. The same eclecticisms and syntheses between truth and falsehood led to the occurrence of tragic events such as the event of ‘Ashura, and prior to it, wars and conflicts between the Commander of the Faithful (‘*a*) and others. Basically, throughout history the same eclecticisms, syntheses and ambiguities have been the source of corruption in Muslim society until the time when a man from the lineage of *Ahl al-Bayt* (‘*a*) rose up and clarified so many Islamic concepts which people accepted and responded positively to his call and the glorious Islamic Revolution took place in Iran.

Obviously, as long as the zealous youth who sacrificed everything they had for the sake of Islam are present, they will never allow the ideals of Islam to be undermined. Thanks to Allah, our Muslim people have a considerably high level of political and social awareness, are true to their duty and know what to do. We have not come forward to determine for them their practical duty. Our only duty is clear the

intellectual and ideological atmosphere.

We only want to throw light on the theoretical and practical foundations of Islam. We want to show what Islamic culture is and how different it is from Western atheistic culture. We want to tell the people that humanism, secularism and liberalism are the main elements of the culture of atheism and infidelity, and in contrast, God-centeredness, nobility of religion, *wilayah al-faqih*, and legal limitation of the action of man within the parameter of obedience to the One and Only God are the main elements of Islamic thought.

These two cultures are at odds with each other. The first culture invites man to absolute freedom including freedom from obedience to God while the second culture invites him to pure obedience to God. The first culture strives hard to remove God from the mind and life of man while the second, our culture endeavors to hoist the banner of monotheism and preserve the idea of unity in the life of man.

Nature of law and its special function in Islam and liberalism

According to Islam, law must also serve man's spiritual interests and welfare, and not only maintain social order and security. According to the liberal point of view, law has no other function but to provide for means of enjoyment. As long as enjoyments and utilization of power do not endanger the freedom of others, law has nothing to do with it. So, the philosophy of law is only protecting the freedom of others, providing the needs of people and allowing them to fulfill their desires.

This is the goal of law in the humanist and liberal thought of the West, according to which the scope of law is very limited, and the government interferes nominally in the lives of people because the principle is that they should be free to do whatever they like. As such, it would be correct to say that the preservation of freedom is above law.

According to Islam, however, law is meant to institute the correct path of human life and guide society toward material and spiritual evolution. Also, the Islamic ruler is he who tries to materialize these interests in society and prevents whatever threatens them. Thus, there is a wide difference between the duty of the Islamic ruler and that of the democratic and liberal ruler, because the latter has to pave the ground for the people to fulfill their wishes and desires. He has to prevent chaos and disorder only and he cannot impose any other restrictions. Those who say that freedom is above law, particularly people of knowledge, education and research who regard themselves as authorities, should be more careful and examine meticulously and precisely the subject at hand.

In essence, law determines a right for a person and a corresponding duty for others. The law is an instrument to restrict freedom. If every person is supposed to do whatever he or she likes, there will be no more need for law. Law comes to the fore whenever people have to dispense with some of their personal desires. If every person is supposed to do whatever he or she likes, what need do we have for law? So, the essence of law is that it determines a right for a person and its corresponding duty for

others. Even if we have a law which proves a right for all people, it will still encompass a duty.

For example, if we have an international law which stipulates that every person has the right and freedom to reside wherever in the world he likes, its purpose is to prove a right for all people, but it is impossible to do so without determining a duty for others, because if everyone has the right to reside wherever he likes then the others have to respect that right and not disturb him. Thus, the law implicitly or explicitly contains dos and don'ts. Even in cases where it proves a right for everybody, its purpose is that the others are duty-bound to respect and observe this right.

Any law which stipulates that we have to do a certain thing implies that we should not act otherwise and this is an infringement of freedom and presentation of dos and don'ts. So, any law which says that no freedom should be limited contains a contradiction. Law is that which limits freedom. Therefore, freedom cannot be above law, unless we want to define a certain kind of freedom. In this case, we say that this freedom should be observed as a law that is above other laws.

However, if a law states that no restriction should be imposed on any freedom, it is void and inherently contradictory and no reasonable person will ever accept it. Since the function of law is to limit freedom absolute freedom is a contradiction. But if they mean legitimate freedom, our question is: What do you mean by "legitimate freedom"? Who should determine which freedom is legitimate and which not?

Relativity of legitimate freedom

Every system regards certain things as legitimate and rational on the basis of its particular culture even when others regard the same as illegitimate. So, absolute freedom is meaningless and no law can incorporate absolute freedom. Whenever it is stated in a legal text that the law has to guarantee legitimate freedom, the reference authority has to identify legitimate freedom and what determines a form of freedom as legitimate, rational and beneficial. In reply, it is said that it is the function of law to identify legitimate freedom.

At any rate if a person says that all kinds of freedom are permissible in society, it means that no law is necessary for the society. No reasonable person can talk as such, unless he or she is not aware of what he or she is talking about.

So, anyone who talks about freedom is referring to limited freedom. The question here is: who determines the scope of freedom and on what basis? If the determination of the scope of freedom depends on the whims of individuals, chaos will surely follow because everyone wants to secure his or her own interests. So, there must be someone to determine the scope of freedom. All laws need to be determined by a legislator.

Obviously, if the decision of the legislator is based upon the will of people and the criterion and basis of law is the will of people, the sensually indulgent will actually dominate. That is, it is the main axis of

humanist and liberal thought because according to it the utility of law is nothing more than prevention of chaos and disorder and fulfilling popular demands. According to Islam, however, this line of argument is unacceptable because it has fundamental problems.

Tension between Islam and liberalism

After accepting Islam, we cannot afford to accept liberalism. Once we accept that law guarantees the interests of people, we can no longer say that every person can do whatever he or she likes because these two premises are irreconcilable. Either God or man should be the axis. In other words, we should either be Allah-ist or humanist. One cannot be both man-centered and God-centered. Acceptance of these principles, apart from being contradictory and conflicting, is a form of *shirk* and once we reject God, it is *kufr* and atheism.

The West's humanist culture is atheistic because Islam, *kufr* and atheism, fundamentally conflict with each other. This is the reason why the American statesmen are of the opinion that as long as the Islamic system is prevalent in Iran, they cannot afford to reconcile with Iran, because these two views are contradictory; these two political systems are irreconcilable.

So, the main question is this: What is the salient feature of ideal law in different thoughts?

Should law only establish order in society and fulfill individual demands and freedom as long as they do not infringe upon the freedom of others? Or, should law secure the real interests of people whether the majority of them agree or not? Of course, it will be implemented and executed once the people accept it, and if not, it shall only remain in paper. So, the people are in charge of the affairs but they should know the basis of the law's legitimacy.

Is ideal law the one which is based on the will of people and fulfills their demands, or is it the one that guarantees the welfare of people? These two views are irreconcilable and to mix them together is tantamount to creating a misty cultural atmosphere so that those who intend to take advantage of it can catch fish in troubled waters. We have to clarify which is Islam and which *kufr*, so that everyone can choose whichever he or she likes:

﴿...فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفُرْ...﴾

“...Let anyone who wishes believe it, and let anyone who wishes disbelieve it...”³

متاع کفر و دین بی مشتری نیست گروهی این گروهی آن پسندند

The merchandise of kufr or religion is not without customer.

A group could choose this while another group could choose that.

In any case, the people have to know which merchandise belongs to religion or *kufir* so as to choose one of them. It is incumbent upon us to clarify these notions and to cleanse these dusts from the foggy cultural atmosphere so that the people can choose consciously. There are those who have created such an atmosphere and want to make democracy and freedom prevail in place of religion. We should be vigilant; we should be very careful in what we say and what we do.

Legislation in Islam and democracy

We mentioned in the last session that conciliation between Islam and democracy in legislation cannot be established. Democracy means populism or government of the people. In other words, it means upholding the people's will and view. Now, the question is: Is credibility based on the will of people limited or not? When we say that the criterion and basis is the people's will, is it so even if it is against the will of God? Or, is the credibility of the will of people so perfect that it is not in conflict with the law and will of God? What is intended by this concept and terminology in the West is that the people's view is the main criterion and no other power in heaven and earth has the right to interfere in people's destiny and legislation for them. The law is what the people want.

At this point, this question is relevant: Is the consensus of opinion of all people the criterion of the law's credibility, or is majority vote enough? The consensus of opinion of all people is impossible in actuality, and if the majority vote is enough, what will be the duty of the rest, and should the majority vote be binding on them? In reality, today's democracy is a mixture of democracy and elitism. That is, the people elect an elite group to enact laws for them.

Now, if there is a conflict between the view of the majority of people and their elected representatives, which view shall prevail? Of course, the representatives usually enact laws in accordance with the will of the people; otherwise, they will not be elected in the next round of elections. Since they have to fulfill the wish of the people, they enact laws as per the desire of the people. There are also cases, nevertheless, when the people's view differs with that of the majority of representatives.

There are those who have explained that their aim is to replace the Islamic government—the government of the clergy and *wilayah al-faqih*—with a democratic government in Iran. “Democratic” implies that apart from the will of the people, nothing has a say in determining the law. Can the Muslims accept it or not?

Meanwhile, to those who claim that Islam is harmonious with democracy, this question is posed: Is the vote of the people binding even if it were against the definite decree of God, or not? If it is not binding, it follows that democracy has not been established. If the criterion of the law's credibility is the vote of the people even if it were contrary to the definite decree of God, in this case democracy is not harmonious with Islam. Is Islam other than obeying God and the Apostle (s)? Do we have another Islam?

Nowadays, it is said that there are many interpretations of Islam but the interpretation on the basis of

which this Revolution has come into being is that the decree of God and divine values must prevail in society. The interpretation of those who staged this Revolution, have defended it up to the last drop of their blood and will do the same in future.

Thus, if democracy in the legislative dimension means giving precedence to the will of people even if the enacted laws were against the decree of God, such a democracy from the viewpoint of Islam and the Muslims is unacceptable. However, if democracy has another meaning such that while preserving the Islamic foundations, principles and values, the people could get involved in the legal and social issues of their society by electing their representatives and enact specific laws for certain circumstances of time and space. This is something which exists in our country. That is, the people elect their deputies in the Majlis.

The Majlis' deputies engage in a debate and deliberate about a bill and afterwards ratify it. However, the ratified bills are credible provided that they are not against the laws of Islam.

In any case, for the people to elect their representatives to determine the variable laws according to specific circumstances of time and space is something existing in our country. The Imam endorsed the same process and our Constitution also approved it. If democracy in legislation refers to it, such a democracy exists and nobody opposes it.

The binding law in the Islamic government

An important question is that when the people's representatives ratify a bill in the Islamic Consultative Assembly, is this ratified bill credible because the people's representatives have ratified it and in principle the people have elected their representatives for this purpose, or is it because the ratified bill is in a sense confirmed by the *wali al-faqih*? Theoretically, we believe that the foremost right that man should observe in his life is the right of Allah [*haqq Allah*].

If we are supposed to observe certain rights, the right of Allah takes precedence and the foremost right of Allah over the people is the right of Lordship [*haqq-e rububiyyat*] which has two types, viz. cosmic Lordship [*rububiyyat-e takwini*] and legislative Lordship [*rububiyyat-e tashri'i*]. Legislative Lordship denotes that whatever God commands is obligatory upon man. So, if God prohibits a thing, it must not be done, and violation of the divine laws and decrees is an infringement upon the divine right of Lordship, and denying and regarding it as non-binding is a form of *shirk*.

As such, the law which is pleasant to God will be credible in Islamic society. If God prohibited a law, it shall not be binding because the right of Allah is violated and by violating the right of Allah, the rights of men will also be violated. Does God acquire any benefit from legislation? In bidding and forbidding us and enjoining a decree, does God want anything other than the welfare of man? So, whenever an act is against the dictum of God, it is also against the welfare of man. In conclusion, the main pillar of the law's credibility is that once the preservation of the interests of man is endangered, the right of Allah is also violated.

As such, such a law shall not be binding. It is on this basis that after the ratification of the bill by the people's representatives, there is another filter, and that is, certain lawyers and *fuqaha* have to adapt a bill to the religious standards and check whether it is against the law of God or not. This is the function of the Council of Guardians.

If the credibility of law depends only on the people's vote, what are the *fuqaha* of the Council of Guardians then supposed to do? The people have cast their vote. Their representatives have ratified and enacted the law they requested and the said law has become binding! In the Islamic Republic system, the first and foremost function of the Council of Guardians (and of course, they have other duties) is to check the conformity of the statutory laws of the Majlis with Islam; that is, what the people have voted for through their representatives.

One reason why you see the Westernized elements, and those who pour water into the enemy's watermill, talk about the abolition of the Council of Guardians is that they want the absence of a filter that checks the conformity of laws with Islam. Today, I am making this statement for you to be informed—perhaps you cannot believe, and God willing, it will not happen—that the liberals and Westernized elements are trying to remove Islam and *wilayah al-faqih* from the Constitution. By His will, God will not give such a chance to the enemies of Islam and the Islamic system.

1. It refers to Dante Alighieri (1265–1321), the Italian poet and writer well known for his epic poem *La divina commedia* (The Divine Comedy). [Trans.]

2. Surah al-Baqarah 2: 159.

3. Surah al-Kahf 18:29.

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