

Session 18: Requisites of Legislation and Its Station in Islam

In Islamic legislation the goal of law is to protect the material and spiritual interests of human beings. Subsequently, a question is raised: Who should be the legislator? There are different views regarding this. Generally, the credibility of two conditions among political and legal philosophers is common: One is that the legislator must be one who knows the purpose of law. The second is that he should not sacrifice the interests of society before the altar of personal interests.

Legislator's qualifications as exclusive to God

Here, apart from taking into account the above two qualifications, Islam holds that the legislator must definitely be aware of all the material and spiritual interests of man and not favor personal and group interests at the expense of the interests of society. Islam also highlights the point that legislation is basically the right of the one who can bid and forbid human beings. Even if certain individuals have great knowledge of the interests of society and consider the interests of society as more important than individual and group interests, still the right of legislation does not essentially belong to them because every law consciously or unconsciously contains command and prohibition.

In the session in which we talked about the relationship between right and duty, we explained that every law explicitly, implicitly, or suggestively commands and prohibits. Sometimes it says, "Don't encroach upon the property of people," which is an explicit prohibition, or "Honor the property of others," which is an explicit command. At times, the language of law is bidding and forbidding. For example, it says that the right of so-and-so is established so others should observe this right. This is a command which is embedded in law. Similarly, others are not supposed to transgress this right, and this is a prohibition which is embedded in law.

Thus, the legislator must have the right to bid and forbid others and this right essentially belongs to God. The first condition is that the legislator must have the most knowledge and awareness of the interests of

men and the highest form of such a condition is present in God because He is the most knowledgeable of what is good for His servants. Also, the second condition is that the legislator should not consider the individual interests as more important than the social interests and the highest form of such a condition is present in God because He acquires no benefit from the actions of His servants.

For all people to be faithful does not benefit Him whatsoever. Also, for all people to become infidels does not harm Him whatsoever. Observing or violating laws does not affect Him at all. Meanwhile, the third condition is something which none except God intrinsically possesses, which is the right over others to bid and forbid. What right do some people have to rule over others? All are equal before God and it is He who is the Owner of all human beings. The entire human race solely belongs to Him and it is only He who has the right over people to bid and forbid.

In other words, human beings should recognize God's Lordship and give His right of Lordship. Thus, Lordship manifests itself in two senses: one in the ontological sense; that is, man has to regard the management of the universe as intrinsically belonging to God. He should believe that God has set innate laws in the universe. The sun and moon move by His leave and command, and the transformations in the universe take place according to His will. Thus, He is the cosmic Lord and Cherisher of the universe, Master of the Command, and the Regulator and Maintainer of the universe. Similarly, he has to believe that God also has the legislative Lordship. During the previous session we discussed the point that legislative Lordship belongs to God and monotheism in the legislative Lordship requires that man should acquire ranks from God alone, obtain the law from Him, while the implementer implements it in society by God's permission.

Objection on the necessity of legal authorities' plurality

This gives rise to skepticism thus expressed: You say that the law must be enacted by God for this is what monotheism in the legislative Lordship demands, but we see that in society we need laws which God has not enacted. The people enact these laws and were they not to do so, society would be left in abeyance. For example, so many laws in our Islamic society are enacted by the Islamic Consultative Assembly. These laws, needed by society, have not been enacted by God and the Prophet (s) and an illustrious example of these laws which everybody is familiar with are traffic laws. Without the existence of these rules, there would be so many accidents in the world endangering the lives and assets of people.

On the one hand, society is in need of such laws, and on the other hand, God has not enacted these relevant laws. Any driving and traffic rule is present neither in the Qur'an nor in the words of the Prophet (s) and the Imams (a). So, how can all laws be divine and godly and enacted by God? If common laws enacted by human legislators are also binding, it follows that we have two sources of legislative authority; one is God and the other, the people—which according to you is tantamount to polytheism in religious legislation. This skepticism is expressed in various forms, and already been addressed, but

unfortunately, it is not understood the way it should be.

Reply to the first objection

In replying to the legitimate question raised, we need to pay attention to two points. One is that the law has numerous terminologies. Sometimes, law is referred to as general rules and does not include specific laws, executive orders and instructions. At times, the term “law” is so broadly understood that it includes even an administrative instruction issued by the head of an office to his subordinates. In other words, law is a term with general and specific meanings and both are correct.

The second point is that in Islam there is a set of fixed laws which under no circumstances can be amended. They are fixed for all people and at all times. There is also a set of alterable laws which follow the circumstances of time and place. While keeping in view the general principles elucidated in Islam, the *mujtahidin*, religious scholars and *fuqaha* have to legislate and enact these alterable laws.

What needs emphasis is that fixed laws are promulgated by God, and general frameworks are to be determined for alterable laws. It is impossible for all fixed and alterable laws to be enacted by a legislator uniformly and evenly all over the world. The alterable laws needed at all times and places are not limited and confined. The mental and intellectual capacity of man cannot contain all alterable laws needed from the beginning to the end of the world. As such, every part of these laws must be enacted at a particular time.

Assuming that during the early period of Islam when there was no trace of automobiles and vehicles, if it was said that drivers must keep to the right, the people would never understand and comprehend it. These laws must be enacted in every period according to specific requirements and circumstances, but they have a framework already determined by God. Those who enact these laws should follow that framework. There is a set of values which should not be neglected. This important task should be shouldered by those who know the fixed laws and the framework for alterable affairs better than everyone else.

Thus we mean that laws, which are divine and from God, are fixed and eternal laws. Secondly, God has already determined the framework for alterable laws which are the criterion for identifying the merit of alterable laws. In this regard, the Qur’an has an emphatic expression:

﴿وَوَضَعَ الْمِيزَانَ * أَلَّا تَطْغَوْا فِي الْمِيزَانِ﴾

“And set up the balance, declaring, ‘Do not infringe the balance!’”¹

What the divine and monotheistic outlook emphasizes and demands is that since law includes both command and prohibition, the one who has the right to enact law is he who has the right to bid and

forbid the people and that is no one but God. Human beings have essentially no right to bid and forbid one another, let alone enact and implement laws. If alterable laws suitable to the requirements of time and place are supposed to be enacted, the authority to enact laws must come from God because it is He who has the intrinsic right to command and forbid. He has to grant others that right so that laws they enact become binding.

Second objection: absence of God's will in legislation

Another objection being raised is that considering the authority of God as a requisite in legislation is nothing but empty rhetoric. It is not that given this requisite, changes are really taking place in the legislative process. Mere playing with words is taking place. For example, in the Islamic Consultative Assembly a certain number of people gather and deliberate what law they will enact about a particular alterable social affair at a given period.

Finally, they enact a certain law. What difference will it make whether God has granted authority or not? This is mere rhetoric. The criterion of the law's credibility is that a number of experts examine the pros and cons and enact a law after identifying its merits. Is there any difference whether this law is enacted by individuals who have so-called legislative authority, or by other experts? The objection is noteworthy.

Reply to the second objection

The objection asserts that for a person to authorize another to do a certain work does not change the reality of the work. I ask, can social life be established without these authorizations? Assume that a person has parked his vehicle and you need it due to an emergency. Can you drive his vehicle without his permission, go, attend to the emergency, and return? Prior to his permission, do you have the right to use his vehicle? If you used it without his permission, then you did something against the law, giving him the right to sue you in court and ask for your conviction because he had not given you permission.

Consider as another example a man and a woman who want to marry each other. They have known each other for years. They have been working together in an office and are familiar with each other's character. They are well-acquainted with each other's families. Yet, as long as the wedding contract is not signed or a ceremony acceptable in their custom not held, their intimate relationship will be illegitimate. It is true that the marriage contract is mere verbal pronouncement that is observed through the consent of both parties, but it is an utterance that renders thousands of unlawful things lawful and also thousands of lawful things unlawful.

The social life of man depends on the same authorization. In principle, social life exists through the same authorization, permission, signing, and rejecting. Another example; assume that somebody is supposed to be appointed as your city mayor, but his letter of appointment is yet to be issued and the meeting for his appointment is awaited, does he have the right to go to the mayor's office, occupy the mayor's seat and start working? He has no such right and the employees will kick him out and say, "This is the table

of the mayor!”

If he says, “This table belongs to me, and a month from now I’m supposed to be your new mayor,” they will reply, “As soon as we receive your appointment, you will be our mayor.” If he says, “It’s only a matter of a signature and authority to be issued by the minister.” They will say, “Yes, it’s the same signature that will give you authority.” All social transactions acquire official status through a signature; so with legislation. When legislation is a prerogative of God, as it really is, only through His authority can rules enacted by others become binding; otherwise, those rules will never acquire legitimacy and credibility:

﴿قُلْ ءَأَللَّهُ أَذِنَ لَكُمْ أَمْ عَلَى اللَّهِ تَفْتَرُونَ﴾

“Say, ‘Did Allah give you the sanction [to do so], or do you fabricate a lie against Allah?’”²

In the absence of God’s authority, what right do you have in saying that a certain act is permissible or not, *halal* or *haram*? This is the meaning of enactment of law—that is, this act is permissible while that act is not permissible. In simple terms, this is *halal* and that is *haram*. In the absence of authorization from God, can you issue such decrees? The difference between the Islamic Consultative Assembly and the National Assembly of the ex-regime lies in this—this assembly is formed through the one who is designated by God.

That is, the *wali al-faqih* gives it the permission to enact alterable laws and his authorization gives credit to the bills of the Islamic Consultative Assembly. Once the *wali al-faqih* is granted this right by the Imam of the Time (may Allah expedite his glorious advent), others do not have such a right. Also, once the Imam of the Time (may Allah expedite his glorious advent) is granted this right by God, others do not have such a right. The one who has been authorized by God directly or indirectly can exercise authority with respect to the affairs of others and command them to do or not to do a thing. But the one who has no authority has no right to bid and forbid, and his command and prohibition are not binding.

(In my theoretical discussions, I do not want to cite quotations from individuals, but Imam Khomeini cannot be placed in the rank of other individuals. His statements were derived from the Book and the *Sunnah*. As such, I shall quote his statements.) In one of his speeches, he explicitly said: “If the President is not designated by the *wali al-faqih*, he is *taghut* and it is not permissible to obey him.”³

The President is elected by the people through a general suffrage, but if he is not granted authority by the *wali al-faqih*, he is *taghut* as said by the Imam. His command and prohibition are not binding and it is not permissible to obey him. In all his decrees of confirmation [*tanfidh*] of the President, the Imam said: “I do hereby designate [*nasb*] you.” (In some instances, he stipulated: “By virtue of the divine guardianship [*wilayat-e ilahi*] I have, I do hereby designate you to the Presidency.”) This was in spite of the people’s vote, and their vote was confirmed to be valid.

Of course, the people are supposed to participate in social activities. It is their religious duty to get involved in elections. As such, during elections, the Imam would say: “It is a religious duty to participate in the elections. In the end, however, the religious credibility of the act of every legislator or designated authority must be traced back to God for it is He who is the Authority in the world. God has granted the Prophet (s) and the Imams (‘a) the authority to rule and legislate. The other person would be one designated by the Prophet (s) and the infallible Imam (‘a) through a general designation such as in the case of the *wali al-faqih*, or through a specific designation as in the case of the governors and deputies during their time. Such a person acquires legitimacy through the authority of any of the infallible personages. Once he is given authority, he acquires credibility.

So, having or not having authorization, having approval or not is the difference which exists in all social issues. What is the difference between a “mayor” whose appointment is not yet announced and the others? What is the difference between the “Minister” of Training and Education whose appointment is not yet announced and the others? It is true that the appointment is soon to be released but today he has no right to engage in any kind of official transaction. When he receives his letter of appointment, he will be officially commissioned and by means of a single signature, exercise authority over the public treasury.

A person may turn over his millions worth of property to you, and grant you the authority to spend it in whatever way you like. He may also give it as a public endowment. In any case, by uttering a single sentence, “I do hereby give my wealth,” everything is finished, and to exercise authority over his wealth becomes *halal* and permissible. But in the absence of his authority and grant, it is *haram* to exercise authority over his wealth. Anyone who exercises authority over his wealth shall be deemed criminal. In general, all social affairs follow this sort of authorization. In the absence of this permission and authority, nothing in social affairs can be deemed official. Given this, how can it be said that anyone who under the name of God wants to rule over the people and bid and forbid them is needless of any authority?

Is it possible to rule over the servants of God without His permission? As the people are not our servants, we have no right to rule over them. They are servants of God. The ruler and the ruled are equal before God. In the absence of God’s authorization, the president and the presided, the leader and the led are equal. When God authorizes a person, his command and prohibition become binding on others.

Man’s mastery over his destiny

Another issue is the concept of man’s mastery [*hakimiyyah*] over his destiny raised in newspapers and even in some speeches of the intellectuals and roundtables organized by the Islamic Republic of Iran Broadcasting (IRIB) saying that “human liberties are honorable because according to the Constitution, people are masters over their destiny,” It is thus, necessary to explain the various dimensions of this subject.

The word “*hakimiyyah*” (mastery or sovereignty) is discussed in two fields of law. (Of course, since the two terms are synonymous, those who do not have enough information tend to use them interchangeably.) One is in public international law in which it is said that every nation has mastery over its destiny (sovereignty). As a principle in public international law, this term governs the relations between countries, their position in relation to one another and against imperialist countries.

During the 18th and 19th centuries, especially in the Western world, the sphere of colonialism was extended. Any state that possessed power and force occupied a land at the point of the bayonet or through trick and ruse, or placed a satellite state there, or sent its envoy to rule over there. That is, the destiny of a nation was controlled by others, or it became the protectorate of another country. In essence, the term “mandate” [*qaymumiyyah*] is a term used in international law. After the people became aware of this global oppression and rose up to claim their rights, the principle of sovereignty of nations was raised.

Gradually, it was established in international law that every nation had mastery over its own destiny. That is, others have no mandate or colonial right over any nation. “National sovereignty” means that every nation is independent in relation to another and has mastery over its own destiny. No nation has the right to regard itself guardian of other nations and no state has the right to consider itself mandatory of other states. This is the terminology used in international relations.

The second term is sovereignty of individuals within a society. This principle is related to basic rights. A society is comprised of factions and groups, but no faction or group has the right of dominance over another faction or group. This is opposed to the class-oriented views that existed in many countries throughout the world in which the ruling class was already specified and defined. For example, a family with one thousand members had the right to rule and anyone who wished to rule had to belong to that class. The rulers belonged to the noble class, landowners, or a specific race. This principle of mastery of every person over his own destiny negates the dominance of a particular class or person. So, within society no person can automatically say, “I have dominance over other people.” No group, class or race has the right to regard itself dominant over other groups, classes, or races. This is the principle of human rights.

All these rights and principles apply to the relationship between human beings, and not the relationship between man and God. Those dealing with these principles—whether they profess any religion or not—have never considered the relationship between man and God, let alone saying that God also has no right to exercise sovereignty over man. They were not interested in it. Instead, their interest was determining relations between people—i.e., did a country have the right to exercise sovereignty over another country? Did a certain group, faction, class or individual have the right to dominate others and shoulder the burden of determining their destiny?

That every person is master over his or her own destiny does not mean that God also does not have that right. Now, let us assume that all those who drafted these laws and stipulated these principles professed

no religion and did not believe in God. But it is enshrined in the Constitution of the Islamic Republic that the people have mastery over their own destiny, provided God is the absolute Sovereign. The evidence is the tens of provisions in the Constitution which stipulate that divine laws must be implemented. Given the existence of these provisions, how can a person imagine that this right of sovereignty stipulated for individuals negates the sovereignty of God?! Can any intelligent person have such an understanding of the Constitution of the Islamic Republic?

Lack of contradiction between mastery of man and sovereignty of God

For clarity sake, I shall cite an example from psychology on the issue of “self-confidence”. It is said that man should have self-confidence. This sentence can be heard and read in books more than often. One of the outstanding pivots and dimensions of many discussions conducted daily in radio and television, especially in discussions on child-rearing and family discourses, is relevant to the issue of self-confidence. For example, it is said that a child must be brought up in such a manner that he or she acquires self-confidence.

Dealing with the youth must be such that they acquire self-confidence. Similarly, when raising moral issues it is much emphasized that individuals must have self-confidence and must not depend on others. Meanwhile, in Islam we have another concept called “trust and reliance in God” [*tawakkul*]. That is, man should not expect anything from himself vis-à-vis God. He has to seek everything from Him and to regard Him as the Omniscient and Omnipotent:

وَإِنْ يَمْسَسْكَ اللَّهُ بِضُرٍّ فَلَا كَاشِفَ لَهُ إِلَّا هُوَ وَإِنْ يُرِدْكَ بِخَيْرٍ فَلَا رَادَّ لِفَضْلِهِ يُصِيبُ بِهِ مَنْ يَشَاءُ مِنْ عِبَادِهِ وَهُوَ الْغَفُورُ الرَّحِيمُ

“Should Allah visit you with some distress, there is no one to remove it except Him; and should He desire any good for you, none can stand in the way of His grace: He grants it to whomever He wishes of His servants, and He is the All-forgiving, the All-merciful.”⁴

Benefit and loss comes from Him and the will of man vis-à-vis the will of God is nothing. Compared to the majesty of God’s other creatures, he is utterly insignificant. In the teachings of Islam and the Qur’an, there has been an endeavor for man to be trained in such a manner that he always regards himself insignificant, humble and abject before God. The foundation of Islamic training rests upon the Lordship of Allah and the servitude of man.

They might ask: How is it possible for man to have self-confidence and at the same time regard himself insignificant before God? Is belittling oneself before God consistent with self-confidence, self-esteem, personality development, and similar concepts tackled in psychology especially in educational

psychology?

This is similar to the objection they raised about sovereignty [*hakimiyyah*] which belongs to political issues and is related to the question of dominance over a person while this objection is raised in relation to psychological, moral and educational issues. Concerning the psychological question, the emphasis is on self-confidence vis-à-vis reliance on other people—the child must be trained in such a manner that he or she does not need to rely on his or her parents, friends, neighbors or relatives and can stand on his or her own feet. That means not to rely on other people and be dependent on them; but it does not mean to regard oneself independent of God.

Essentially, the discussion is related to a person's relationship with other people. The concept of "self-confidence" means that you should behave and train yourself in such a way that you do not rely on others, and this is also emphasized in Islam. In the conduct of the Prophet (s) and the pure Imams('a) it is highlighted and emphasized, but unfortunately, we pay little attention to them, thinking they have been newly arrived at by the West.

During the time of the Holy Prophet (s) his companions were trained in such a manner that if someone was riding a horse and the whip in his hand fell on the ground, he would not ask his comrade who was moving beside his horse to pick it up for him. He would dismount, pick up the whip and ride again! This is the Islamic training which urges us to stand on our own feet, to carry our own load, not to be dependent on others, and not to covet others. But this does not mean that we should also regard ourselves independent of God:

﴿يَا أَيُّهَا النَّاسُ أَنْتُمُ الْفُقَرَاءُ إِلَى اللَّهِ وَاللَّهُ هُوَ الْغَنِيُّ الْحَمِيدُ﴾

"O mankind! You are the ones who stand in need of Allah, and Allah—He is the All-sufficient, the All-laudable." [5](#)

Is it possible for man who is in a state of total poverty and need to regard himself needless of God? This is also a form of polytheism. Not to rely on God is diametrically opposed to the spirit of Islam and the entire message of the Qur'an. There are hundreds of Qur'anic verses and traditions in this regard which enjoin man to regard himself as nothing before God and to ask Him for everything. Self-confidence is meant to determine the relationship between human beings, and teach them not to rely on other people because no one is more capable than another.

This is the reply to the question on self-confidence and reliance on God. Similarly, in the realm of political issues such as that of individual sovereignty and national sovereignty, the case is the same. National sovereignty means that every nation should stand on its own feet and others should not exercise a mandate over it. Individual sovereignty means that a person has no spontaneous right to rule and dominate others. It means the individual and national right of sovereignty is subservient to the

sovereignty of God. In essence, sovereignty belongs to God, and by extension, anyone who has been given authority to rule has the right to rule to the extent that God has granted him. In the absence of God's permission, no person has the right to dominate another person.

- [1.](#) Surah ar-Rahman 55:7-8.
- [2.](#) Surah Yunus 10:59.
- [3.](#) *Ḥahifeh-ye Nur*, vol. 9, p. 251.
- [4.](#) Surah Yunus 10:107.
- [5.](#) Surah Fatir (or al-Mala'ikah) 35:15.

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