

Session 8: An Elucidation of the Structure and Form of Government

Status of elemental and evidential definition

In this session our discussion is about the structure and form of the Islamic government. Along this line, I deem it proper to narrate a recollection from the Great Leader of the Islamic Revolution in Iran, Hadhrat Imam Khomeini (q). During the beginning of the Revolution foreign reporters asked the Imam, “After overthrowing the monarchical government, what government and regime will you establish?” He replied, “A government like that of the Commander of the Faithful (‘a)”.

Defining and describing the Islamic government to reporters with a particular culture and social fabric and no mental preparation to grasp Islamic concepts in view of their fundamental differences with us in this context, required many hours. Yet, the Imam gave them a complete and convincing answer in one sentence, because by knowing the distinctive features of the government of the Commander of the Faithful (‘a)—which is known to both friends and foes, and to know which does not require much extensive study and examination—the model of our government could also be known.

This type of explanation and definition, i.e. evidential definition, is the simplest way of describing the nature of a thing to the masses because understanding intricate concepts is difficult for them, so by indicating external manifestations and samples, they understand better. For example, in order to explain electricity, we show them an electric light or an electric device. In this type of definition, the characteristics, properties and salient features of a thing are not mentioned. In the academic and scientific circles, however, the definition must be derived from the principal or secondary features which describe the genus and quality mentioned in logic. In this kind of definition, initially the general and broad meaning is mentioned and then the specific meaning that excludes other types.

Another way of identifying the nature of a thing is to consider the elements. That is, the essentials and features of a thing are examined and their totality serves as the definition of that thing. In view of the

number and scope of the essentials and features, any person will conclude that any thing having those features has the nature under consideration.

Islam and theory of separation of powers

The macrostructure of the Islamic government and its basic features, or the Islamic theory on politics can be defined in one sentence. The Islamic theory on politics is: all aspects of politics and government are divine, and inspired by the Source of revelation. This point determines the Islamic nature of the system and government.

In describing comprehensively the Islamic government it is necessary to consider the theory of separation of powers mentioned in the philosophy of law. During the last centuries there were intense disputes and conflicts among legal philosophers over concentration or separation of powers. These were on whether all powers should be in the hands of an individual or group, or powers should be separated from one another and every person or group should be concerned with only one power.

Finally, after the Renaissance, particularly after Montesquieu—who wrote a major treatise entitled “The Spirit of the Laws” (1748) in which he emphasized separation of powers—legal philosophers arrived at a consensus on separation of powers and their three divisions, viz. the legislative, the judicial and the executive. These were considered as the main branches of democratic and popular governments.¹ For each of the powers a distinct realm and area was taken into account so that none of the powers was authorized to interfere and meddle in another’s domain and their independence officially recognized. After the separation of powers, a definition was presented for each of them. We shall briefly mention their functions below:

1. Legislative power

One of the important pillars of government is the legislative. In view of the continuous change in social life and the need to formulate appropriate laws for every change, a group of individuals sit together, and, after discussion and deliberation, enact laws and regulations for the management of society, which are official and binding.

2. Judicial power

After the codification of laws and their official recognition and accreditation, there is a need to consider a branch of government and apparatus to adapt general laws to particular cases, to identify rights and duties, and to remove differences and disputes. In case of a dispute among citizens, or among organs, or between the citizens and the government, as well as in relation to the violation of the rights of people, the only authorized agency to adjudicate, attend to and adapt laws to those cases is the judicial power. Mere ratification of laws in parliament cannot solve any problem, because in times of dispute and discord, everyone deems himself rightful and interprets the law in his favor.

3. Executive power

Undoubtedly, In order to achieve its objectives, society is in need of law, but all people do not observe the laws. In fact, there are various motives to violate them. The law needs an executive power which possesses sufficient clout to implement the rules and regulations. The executive power is expected to implement laws, deter violations and implement judicial decrees passed in judicial courts. Along this line, if naked force is needed to implement laws and punish violators and criminals, disciplinary forces can be employed.

We briefly stated the theory of separation of powers in democratic and popular systems. We do not intend to explain the Islamic viewpoint on the theory of separation of powers but we deem it necessary to note that in the Constitution of the Islamic Republic of Iran, the principle of separation of powers has been accepted, while the principle of *wilayah al-faqih*, which emanates from the Islamic nature of the system, serves as the point of connection between the powers. Legitimacy of powers in the Islamic system lies in the Islamic and divine structure, and in a sense in their connection to the Origin of creation, but *wilayah al-faqih* is the system's link to God and its basis of legitimacy.

Once we talk about the enactment and implementation of laws in the realm of Islamic political system and claim that the aggregate of approved laws and rules should be Islamic and religious, we make it clear that Islam is concerned not only with issues pertaining to prayer and fasting, worship and supplication, but it is a comprehensive code of life that embraces social law, corporate law, civil law, commercial law, international law and other laws needed by society.

Thus, as principle and rule, we have accepted that Islam has social laws that bind the government to regard them as credible and strive to implement them. According to Islam if a government neither regards the laws of Islam as credible, nor strives to implement them, it is an illegitimate government.

Skepticism on alleged impotence of Islam in social administration

Here the expressed skepticism is that man is increasingly in need of ample new laws. Indisputably, in the text of the Qur'an, the *Sunnah* of the Prophet (s) and the sayings of the pure Imams (a) not all the laws addressing the needs of the day can be found. Nowadays, man needs a set of laws whose subjects did not exist during the early period of Islam, for which specific rulings need to be issued.

For example, let us consider the laws pertaining to airspace and the air jurisdiction of countries. Does an airplane have the right to enter the air jurisdiction of another country with the permission of its authorities or not? Such laws basically do not exist in the Qur'an, the Prophet's *Sunnah* and sayings of the *Ahl al-Bayt* (a) because at the time, there was no airplane to be discussed.

The same applies to traffic and driving rules as there was no car at the time as well as laws on seas and

outer space and other subjects and there is a need for legal experts and legislators to enact appropriate laws for them after thorough examination and contemplation.

Given the fact that the said laws that address all needs of society do not exist in the Qur'an and the *Sunnah*, how can it be claimed that Islamic and divine laws must be implemented in society when in fact Islam has no law in so many areas?!

Society is in dire need of such laws, which we cannot find in Islamic sources. What options do we have? How can we consider ourselves as bound by Islamic laws?

What has been mentioned made those who have no faith in Islam express skepticism in religious laws as impractical and insufficient to administer society, and suggest more efforts be exerted on enacting and implementing man-made laws. In order to portray the subject as confusing and complicated, they expressed the above skepticism in various forms, and people also exacerbated it for different motives.

Undoubtedly, their goal is to undermine the Islamic government and to inculcate the notion that Islam cannot administer society. Therefore, the plant if the Islamic Revolution and Islamic government and emphasis on it is futile and the idea of "Islamization" of the government should be forgotten, because it is not feasible. Unfortunately, some sympathizers of the Islamic Revolution and followers of Islam have also been influenced by this skepticism. It is necessary to present an appropriate reply so that, they remain faithful to Islamic laws, and find solutions to cases in which society needs a law which has no precedence in Islamic sources.

Types of laws and necessity of enacting variable laws

In reply to the above skepticism, it is necessary to explain at the outset that law has a general and broad meaning which also includes *natural laws* such as laws on physics, Lavoisier's² law on chemistry, Newton's law of gravity and Einstein's law of relativity. This group of laws that exist in nature and can be empirically proved are discovered by scientists and are not enacted. These fixed and actual laws are related to natural phenomena, and have nothing to do with legal, political and social laws.

Similarly, we are not referring to *rational laws* such as laws on logic, philosophy and mathematics. We are referring to *enacted laws* which are technically called "conventional laws" [*qawanin-e i'tibari*]. Of these laws those that are credible and can be implemented, provided they are enacted by a credible authority, can be divided into three types:

1. The constitution

Constitution means a set of relatively permanent laws codified by competent authorities for a country in accordance with its culture and traditions. These relatively permanent laws are binding for a long period and considered as the basis and foundation of managing society. In view of their relative permanence and immunity from regular changes, these laws are general and limited; thus, the constitution of every

country consists of some basic and important articles.

As such, in the constitution there is no room for detailed and specific laws which cover extensive and diverse needs, and are subject to amendment with the emergence of new circumstances. The Constitution is general and permanent in nature and detailed laws are not included in it except those detailed and limited laws which, on account of their importance and special status, give stability to it.

2. Laws ratified by parliament

The second type refers to the laws ratified in the Majlis or parliament. Since some countries have another house of legislation called senate or any other term, in addition to parliament, the laws ratified by the said house of legislation are also included in this type of laws. In our country, apart from the Islamic Consultative Assembly (Majlis) which passes bills needed to administer the country, the Council of Guardians, which is similar more or less to the Senate in other countries and to a constitutional court and consists of a group of jurists and legal experts, conforms the bills ratified by the Islamic Consultative Assembly with the Constitution and religious law. In case of inconsistency with the Constitution and the religious law, it refers these ratified bills back to the Majlis for review.

3. Laws ratified by cabinet

In addition to the laws ratified by parliament, in every country there are binding rules and regulations ratified by other organs, for example, the executive orders issued by the cabinet (executive branch). The constitution has rested authority to the cabinet to ratify laws in specific cases. Similarly, in certain cases the president can also personally take decisions. These executive orders and presidential decrees need not be submitted to parliament for ratification as they are automatically deemed legally binding. Also, bylaws and circulars approved by concerned authorities and officially communicated to offices and executive offices are also called laws and the government is bound to implement them.

Thus, in our country as in some other countries there are three types of laws: (1) constitutional, (2) legislative; laws ratified by the Islamic Consultative Assembly (Majlis) or parliament, and (3) executive orders, presidential decrees, bylaws and circulars approved by authorities legally authorized to do so.

At no time and nowhere in the world are these laws and bylaws ratified all at once; in view of changing circumstances, statutory laws and executive orders are amended and reviewed. Today, circumstances may require the Islamic Consultative Assembly to enact a law, and tomorrow circumstances may change and the said law might be amended and reviewed. In this manner, executive orders have to be amended and reviewed with change of circumstances. Also, when a new president assumes office, it is his prerogative to amend or annul previous executive orders.

Of course, those whose primary concern is the interest of society try their best to codify orders with utmost care to ensure that they are devoid of all possible errors. Naturally, when we say that the laws must be Islamic, it does not mean that all laws ranging from the Constitution to the statutory laws and

executive orders must be explicitly derived from the Qur'an.

Meaning of Islamic nature of laws

In explaining the meaning of the Islamic nature of laws and orders, it is important to pay attention to the process of enacting common laws. For example, in codifying and approving bylaws and orders the cabinet or executive power must act within the perimeter determined for it by the Islamic Consultative Assembly and not go beyond it. In other words, the extent of the executive power's prerogatives has been stipulated by the Constitution and the Majlis's statutory laws, and the executive orders should be within this framework.

These orders should manifest the generalities reflected in the Constitution and the laws ratified by the Majlis. Thus, initially, generalities are described in the Constitution and statutory laws whose meanings the cabinet or the concerned authority in certain cases has to interpret within the framework of executive orders. The cabinet cannot act unconditionally on its own without any frame of reference. In fact, its executive orders must be within the framework of the Constitution and laws ratified by the Majlis.

The laws ratified by the Majlis, in turn, must be approved and endorsed by the Council of Guardians. That is, the Majlis must also act within the framework of the Constitution and in this way, its ratified laws will be considered credible, enjoying executive guarantee. Therefore, the credibility of executive orders and their being binding depend on their conformity with the Majlis's statutory laws and the credibility of statutory laws means that they are within the framework of the conditional law of the country.

The credibility of the Constitution of the Islamic system is based on its consistency with the legislative will of God the Exalted. As such, the entire laws and decrees have a linear relationship and they are credible, provided that this hierarchy is observed in such a manner that it ends up in Islam and the legislative will of God. It is not in the sense that all the executive orders, circulars and statutory laws can be explicitly found in the Qur'an and the *Sunnah*.

Since God delegated certain prerogatives to the Holy Prophet (s) to promulgate specific laws and decrees in certain cases, these laws and decrees are credible and binding because they are based on the permission and will of God. It is obligatory to obey and act upon them on account of the decree of God on the necessity of obeying and following him. Under the aegis of this decree of God, the laws and orders promulgated by the Messenger of Allah (s) are credible and, at the same time, it is obligatory on others to obey and act upon them; otherwise, merely to obey the orders of the Messenger of Allah (s) without divine sanction is not obligatory.

So, the laws which God, the Exalted, has directly enacted and explicitly mentioned in the Qur'an occupy the foremost degree and are intrinsically credible. The laws enacted by the Holy Prophet (s) in certain cases by God's leave occupy the next degree and their credibility is equal to that of God's command. Similarly, the credibility of the laws which the infallible Imam ('a) enacts and the orders he gives emanate

from the decree of God because God and the Prophet (s) consider it obligatory to obey the Imam.

Now, assuming that we were living in an Islamic territory under the reign of the Commander of the Faithful (‘a), we would have considered it incumbent upon us to obey him. If the Imam (‘a) appointed a person like Malik al-Ashtar as the governor in our region saying, “Act upon his orders and do not defy them, for whoever obeys him actually obeys me,” the mere orders of Malik al-Ashtar would not be binding for the people because he was like other people, but obedience to him would have been obligatory and his orders binding because he was designated as governor by the infallible Imam (‘a) who, in turn, had been designated by God through the Prophet (s), and to obey him would be *wajib*.

However, laws and orders issued by a governor, designated by an infallible Imam, are considered laws of a third degree. As an analogy, the governor is like an appointed official whom the Islamic Consultative Assembly has granted powers on the basis of which he has authority to issue circulars and instructions, and on account of those delegated powers, his orders are binding. Similarly, the Majlis has acquired its credibility from the Constitution and its statutory laws acquire credibility under the auspices of the Constitution.

The credibility of the constitution in other countries emanates from the will of the people. But we believe in a higher station and reference with respect to the Constitution. We believe that the credibility of the constitution should emanate from the will of God, and the Prophet (s), an infallible Imam (‘a) or any person like Malik al-Ashtar, designated by one of the infallible Imams (‘a), has to endorse it. Therefore, the credibility of law should emanate from the words of God, the Prophet (s), an infallible Imam (‘a), and then any person designated by an infallible Imam. This is the logic and theory of Islam.

In the time of occultation [*ghaybah*] of the infallible Imam, since the *wali al-faqih* has been chosen through a general designation by the infallible Imam, his *wilayah* is endorsed by the Imam and acquired credibility, thus, his approval is the source of credibility of the constitution; otherwise, the constitution by itself is questionable. It is debatable as to where its credibility emanates from and who has the right to amend it. On what basis does a minority that has not voted for a certain law abide by it? And there are many other questions. However, when we say that this law has been declared credible by one formally designated by the infallible Imam, there is no room for any more questions.

Process of legislation in the Islamic government

It is clear in the theory of Islamic government that the original credibility of law comes from God, and the words of anyone, like the Prophet (s), who is credited by God, become binding. In turn, the words of anyone who is designated by the Prophet (s), or the Commander of the Faithful (‘a), are equally binding. Similarly, the laws and decrees issued by anyone who is designated by the infallible Imam (‘a) through a general or specific appointment shall be Islamic and sacred because they have been approved by God.

Of course, as we have said, in the Islamic government this approval may take different intervals. The

credibility of approval of the *wali al-faqih* emanates from the approval of and endorsement by the infallible Imam (‘a) and the credibility of decrees and approval of the infallible Imam, in turn, emanates from the approval of and endorsement by the Prophet (s). Finally, credibility of the Prophet’s approval is confirmed through an explicit text [*nass*] of the Qur’an where God says:

﴿...يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you...”³

and in another verse:

﴿...النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ﴾

“The Prophet is closer to the faithful than their own souls....”⁴

Thus, the aforementioned link has a perfectly logical foundation for the members of an Islamic society and those who believe in the truthfulness of God, the Prophet (s) and the infallible Imams (‘a). As we have expounded earlier, we have to talk on the basis of our audience’s convictions and beliefs and through their language. For this reason, if a person does not believe in God and in the truthfulness of the Messenger of Allah (s), or is doubtful of the infallible Imam (‘a), we need to discuss this issue in a different way.

Initially, we have to deal with the fundamental and essential principles of Islam, and then after proving them, tackle other subjects, including political and administrative issues, on the basis of those principles. Of course, this form of legislation, or the other usual forms can also be examined on the basis of their value for the benefit of society.

Legal status delegated in the Islamic government

In the Islamic political theory, besides the fact that all principles of law must be enacted by God, all laws and orders be approved by Him, the Messenger of Allah (s), an infallible Imam, or his general or specific successor, the implementer of the law also has to be designated by God to acquire credibility through this system of guardianship. (The judicial organ also has an executive function; it must be regarded a righteous reference authority in cases of disputes and differences and check the law prior to its implementation. Therefore, an independent and special status has been given to it.)

At the time when the Prophet (s) or an infallible Imam was present, he had to personally hold the reigns of government or designate someone to implement the law; for example, Hadrat ‘Ali (‘a) appointed Malik

al-Ashtar as the governor of Egypt in order to implement the law there. However, in this period of *ghaybah* when the people have no access to the infallible Imam (‘a), the responsibility of implementing the law lies on the shoulders of the one who has been appointed by the infallible Imam through a general designation, and this will lead us to the theory of *wilayah al-faqih* about which we will discuss later, God willing.

It should now be clear that in Islamic political theory and administrative structure, just as the law should be linked to God, the implementer of the law should also be linked to God and be appointed by God either through a general or specific designation.

The judicial organ should be equally linked to God and the judge should be appointed by God either through direct, or indirect and general designation. In either case, if the judge has no link whatsoever to God, his decree shall have no credit at all. The Holy Qur’an has pointed out God’s direct designation of Hadrat Dawud (David) (‘a) to judge among men:

﴿...يَا دَاوُودُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ﴾

“O David! Indeed We have made you a vicegerent on the earth. So judge between the people with justice....”⁵

And regarding the Prophet of Islam (s), it says:

﴿إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ﴾

“Indeed We have sent down to you the Book with the truth, so that you may judge between the people by what Allah has shown you.”⁶

It also states:

﴿...فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ﴾

“But no, by your Lord! They will not believe until they make you a judge in their disputes.”⁷

In sum, in the Islamic political theory, sovereignty, legislation and the administration of society in all its dimensions and aspects must emanate from the legislative will of God.

¹. Sometimes, in contrast to the common term “government” applied to the three powers, “government” is only applied to the executive power. Of course, this is a specific term which is used in limited cases. Usually, “government” is used in its common and broad meaning.

². Antoine Laurent Lavoisier (1743–1794): French chemist, who is considered the founder of modern chemistry. [Trans.]

- [3.](#) Surah an-Nisa' 4:59.
- [4.](#) Surah al-Ahzab 33:6.
- [5.](#) Surah ʿAd 38:26.
- [6.](#) Surah an-Nisa' 4:105.
- [7.](#) Surah an-Nisa' 4:65.

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