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# Primary Principles Of Law In Islam

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## Prologue

The following article is the text of a speech delivered under the title "*Primary Principles of Law in Islam*" and published under the same title in "*Twenty Speeches*" by Ayatullah Murtaza Mutahhari, the outstanding Muslim authority. In view of the importance of his opinions, the staff of the conference deemed it necessary to reflect his views on the discussions of the conference and include them in the present book. Some opening parts of the original speech have been removed from the present article for they were appropriate to the time the speech was delivered. It is hoped that the views of this outstanding savant may add to the scholarly calibre of the conference.

Justice is one of the principles of Islam. This principle has deep roots in the history of Islam. Although divine justice was in vogue, it stretched to social justice as well; it has reached the point where Islam has ordered that people's relations should be based on justice and preservation of rights and the restraint to violate each other's rights and that no one has the right to violate the rights of others. Does such justice essentially hold any truth? Do people, regardless of the laws prescribed by Islam have any real rights? Does Islam really explain their real rights? Does justice really involve the observance of others' rights? In point of fact and regardless of the laws prescribed by religion, are truth and justice begotten by religious laws? Whatever religion holds just and right is right and just and whatever it holds unjust and cruel is duly unjust and cruel.

There once emerged a group among Muslims who refuted the principle of Justice. They announced the Divine rule to be above justice, both in creation and evolution and in law-making, claiming that the act of God follows no laws. There is one rule. Whatever God does is just and right, not meaning that God does what is just and right but that whatever ordered by God in religion is just and right, not meaning that what religion orders is right and just. It is concluded that in the world today, it would be all right if an obedient person is punished in the Hereafter despite his obedience and virtues and if a sinner is taken to

Paradise despite his vices and sins and there is no harm in that Islam orders some people to enjoy worldly pleasures and to deny others of them. As justice and injustice are not real and rational but religious and subject to religion, this order is per se justice. The view that religion is not subordinate to reason has caused a major change in the Muslim World.

## Essential Issue of Justice

Based on the first view which sees Islamic rules subordinate to real vice and virtue, believing that right and justice are real and that Islam has recognized their reality, we can have an Islamic social philosophy and a set of Islamic laws. We can study the legal principles of Islam and see what is the basis for being rightful and on what base it has established rules. What are its fundamentals? Then we can use them as our guide in many cases. However, according to the second view, Islam has no social philosophy or legal principles and that it rejects any legal principle.

## Principle of Justice in Shi'ism

For the Shi'ahs, there is no need to prove justice, since it is one of the primary principles and a requirement of the Shiism. As the old saying goes, "Justice and monotheism are the principles of Alawis and monotheism and assimilation the attributes of Umayyads."

Justice is our main concern here and by monotheism we mean beholding God free from attributes and eliminating discrepancy between the nature and the attributes, but monotheism means lack of freedom and free will. Determinism involves the notion than man has no power of choice. One of the subordinate consequences of justice is free will. Determinism is a way to reject justice. By assimilation we mean assimilating God to the created beings and attributing their attributes to Him.

## Primary Fundamentals of Islamic Law

Islam has a set of legal principles and established laws based on those principles. As justice is but giving rights to the ones who deserve them, we should realize what the primary principles of Islamic law are as derived from the Holy Qur'an and the instructions of religious leaders. How is it that some liking develops between man and an object which is called right? If somebody takes that thing away, he is said to have been deprived of his right. What is the origin of this liking?

What is the cause of this liking? The Creator is the cause and the creation the effect. The world system is a system of cause and effect. The Cause or Creator of reason is of two kinds: it is either subjective or final. In other words, whatever causes somthing is either a doer and an agent, e.g. when man speaks, he is the cause and the agent of his speech; if there is no such agent, there will be no action, i.e. speech or a final destination of the action and that action is an introduction to and a means of creating that final destination.

When somebody speaks, he seeks a goal. He intends to persuade his listener and make him do something or he wants to inform him of something or ask him something. If there were no such destination and goal and if such speech was not a means to that destination, the act of speaking would never happen. Therefore any speech has a relation to the one who delivers it, that is to its agent and a relation to its destination.

This relation is the means and introduction to destination and final end. In the absence of either of these two causes, it would not have been actualized. Therefore, each of them is the cause and creator. Regarding right and right owner, when we say a special liking develops between man and the creatures and that man maintains some rights, we should see where this liking springs from and what the relation between those two is. Is it from the same type of liking between the means and the end or the type of liking between the act and the agent?

## The Relation between Law and Ideology

It cannot be disputed that religious ideas in regard to man and the world, life and existence, influence the relation between man and other beings. Therefore, it is absurd to say that in materialistic philosophies the final aim is between man and the blessings. The goal liking requires to say that the wealth has been created for man and this per se makes us accept that there is a kind of overwhelming rationale governing the world and that overwhelming reason creates something for something else and for the sake of something else; if there were no such other thing and if it were not for the sake of that other thing, this thing would have not come into existence.

As we say tooth has been created in the mouth enabling one to chew, so that food may go through a digestion process in the mouth by chewing and to be assimilated into the body under the effect of the secretions of glands under the tongue. But in materialistic philosophies, there is no final liking among things. One can never say something is created for the sake of something else, nothing is the goal and the means to something else. If a being uses another being, it is not because one has been created for the other one, but that it has accidentally been useful for this one. Presently, we have nothing to do with general ideas of other methods.

## The Final Relation of Right and Right Owner

According to the general beliefs and Islamic ideology in respect to man, the world, life and universe, there is a final relation between man and the blessings. In other words, there is a relation between man and the blessings in the nature of creation and in the general plan of creation. So if man were not part of this plan, the plan would have quite a different destiny.

In the Holy Qur'an, it is repeatedly stated that all the world's riches and blessings are created for man by virtue of the principle of creation. Therefore, according to the Holy Qur'an, before man can embark upon something and before the religious laws are announced to man, there is a relation between man and the

blessings. All these blessings belong to man. For example, the Holy Qur'an states,

***"God created whatever on the land for you and for the sake of you,"***

or

***"We made you settle down in the earth and placed many blessings for you to be the source of your life and welfare. But you know the value of this very little and appreciate it not as deserved."*** (***Surah al-A'raf, 7:10***)

Appreciation and gratitude for each blessing means using it in the manner for which it is created. Most of the Qur'anic verses state this fact.

Regardless of the explicit view of the Holy Qur'an, if we contemplate on the system of the universe, we understand that there is a final relation between inanimate objects, plants, animal and mankind. On the earth, various food and animals are so created that they can only survive interdependently.

If the balance is disturbed, they cannot survive. Now can anyone claim that there is no liking or relation between the foodstuff and the nutrition system of man or other animals in the general system of the universe and that all this conformity is just accidental? Biologists believe the principle of goal-oriented cause may not be denied at all as far as living beings are concerned. Such a relation exists when we say that food is made appropriate with these needs or the nutrition system is made so as to be able to use the existing foodstuff. At any rate, there is a final interest and these two conform to each other.

What difference does it make if we say, "If men or animals could not do without these, the foodstuff would have not come to existence or if various foodstuff did not have the characteristic they have, the structure of mankind would have been different. At any rate, the creation system shows that they are created for one another.

Therefore, this right has been recognized by the law of creation which has priority over the law of religion and as both laws originate from one common source, i.e. God, He has made religious laws conform to the laws of nature and the creation. He has not established them separately.

This conformity is clearly stated in a Qur'anic verse,

***"Keep your face constantly toward this religion. Indeed it has a strong foundation and that is the nature of people as created by God and the law of creation is not changeable."*** (***Surah ar-Rum, 30:30***)

Therefore, in addition to the statement of the Qur'an, the system of creation itself is a sincere witness to the fact that the creation system has created man and all these blessings for one another. Think of a new born babe. What are the conditions of this baby? What can it do for itself? What food can it eat? What food can its stomach digest? You see God has provided it with nutrition in its mother's womb. As

the time of childbirth approaches, the best food suitable for the baby's digestive system is gradually produced in the mother's mammary glands in a surprising manner and the baby can use the food thus provided as soon as it is born.

Can we say that there is no relation between the baby and its needs and the surprising structure of mammary glands and milk and even between nipples and the baby's little lips? Does not this milk belong to the baby? Who has fixed this right? The Law of Creation. What is the liking and the relation between the baby and the milk? The Final relation. In other words, the milk and the milk production have been all created for the sake of the baby. Therefore, creation itself has maintained that milk as the right of the child. The secretion of the mammary glands is but for the baby, not created aimlessly.

The philosophers divide the creatures into three groups: seven fathers, four mothers and three children. By seven fathers they mean seven skies as believed by the ancient people, four mothers are the initial elements believed by the ancient scientists to be water, soil, air and fire and by three children, composite beings are meant, divided into three groups of inanimate beings, plants and animal. Man is also an animal. The reason for calling them father, mother and child was their belief that the composite beings (inanimate beings, plants and animals) are created under the effect of heavenly factors as subjects and the four elements as object. Therefore, the composite beings are in fact the children of heavenly entities and the four elements.

At any rate, the composite beings are the offsprings of this land and this water and this air, this light and this heat. Man is the superior child of these parents. Naturally, children have some rights. As in the womb of the mother, measures have been taken for the embryonic stage and for the infancy period; such preparations have also been made in this great mother who is called the world and all these have been created with great care.

For example, as the time of birth approaches, the mammary glands start their activity, the glands secrete and all these are just for the sake of the baby. This is also true about the four seasons and the movement of cloud, the rainfall, and spring. These rains are the same secretions of the mother-earth for its children. The Holy Qur'an states,

***"It is He who irrigates your land from up there and you drink this water, He grows trees for you and you use the leaves of those trees. He grows plantations and farms and trees, from olive and palm and grapes and bestows you different kinds of fruits and all these are signs for those who contemplate."***

There are numerous verses in the Qur'an implying the existence of a relation and coordination between the general things on land and the human needs.

It is related from Imam 'Ali (A.S.) who said, "Any living being has food and grain or seed." He means that there is a pre-determined relation in nature between the eater and the thing to eat. Their existence in nature is related to each other. This is one type of relation which exists between right and right owner

in view of the general principles and the ideology of Islam.

## Subjective Relation between Right and Right Owner

Another type of relation, is the subjective relation. That is the right owner himself has created the subject of right for himself. He is the agent and the creator himself. For example somebody plants a tree and takes care of it, irrigates it until it gives fruit. The relation between this person and that fruit is the relation of the act and the agent, i.e. his activity has given birth to this fruit. Had he not worked, this fruit would not have come into existence. This relation itself causes some rights.

## Goal-oriented Relation Causes Potential Right

The first relation that is the goal-oriented relation between man and the blessings is a general relation. In this case, no one has private rights. All people, as they are created by God, have rights toward everything and as all have potential rights no one can prevent others from fulfilling their rights and from allocating all rights to them. But how to take his right is the second stage. In this stage, right and duty become annexed to one another and rights are realized due to the fulfillment of the task and duty and everybody reaches his specific right. There a verse from the Holy Qur'an in this regard. Sura of Hud states,

***"It is He Who created you from earth and asked you to cultivate the earth. So return from sin and repent."***

It does not say, "God does not say" He created you on the earth, but it says, "Created you from earth" brought you out of the earth. It apparently indicates the same meaning that the earth is your second mother. Secondly it says, "God wants you to cultivate the land." Being the child of the earth is not enough for our right to be actualized and for you to obtain right. For the recognition of right, something else is required and that is your action and your efforts in cultivating the land. As long as this task is not fulfilled, the right shall not be realized and will not become evident and specific. Why? Because man has been given reason and free will and authority. And it is his reason and freedom which leads to the growth of his range of action and practice.

## The Role of Reason and Free will in Causing two Stages for the Right of Man

The life-system of mankind is different from that of other beings. They live by their instincts. Being a child of the earth is enough to prove their rights. However, man is endowed with reason and will and should work with his mind and reason. Therefore, as far as he does not do his task, he cannot enjoy his natural rights. As far as man is in the stage of instinct and there is no task for him, his right is evident.

A baby has rights toward his mother's breast without any obligation and the breast milk is his true right. But when man intends to feed on the breast of the earth, it is not as easy as that. He should prepare this milk through his own efforts. Therefore in lieu of his right in the mother-earth, he has a responsibility toward it as well. In other words, this mother-earth has a right toward him which is cultivating and developing the earth.

## Right of the Earth on Man

In his early days of caliphate, Imam 'Ali (A.S.) told the people, "You are responsible even for the animals and the land." Not only are you responsible before God and people but before animals and the earth as well. Do not think this animal of yours has no rights. As it is your property you can do whatever you wish. You can treat it as you may desire, load it even above his power and ability, and feed it whenever you wish. Keep it hungry, thirst, or wounded and think you are not responsible for its needs. No, it is never so. You are responsible for these lands. You should not ruin it: you are obliged to cultivate it. God the Almighty has ordered you to develop the land.

Again, in his well-known conunandment to Malik Ashtar, 'Ali. (A.S.) gives this title to his letter, 'This is what Allah's servant 'Ali Amir al Mu'minin, has ordered Malik Ibn Harith known as Ashtar in his appointment for him when he made him governor of Egypt for collection of its revenues, fighting its enemies, seeking good of its people and rendering its cities prosperous."

## Inseparability of Right and Task

With respect to duties and rights he states, "There is no right for anybody unless accompanied by a task and there is no task unless with a right. Task and right are not separate from one another. Why did the holy Prophet say, "He who imposes himself on others is far from the Grace of God?"

## Right of the Weak People

Islam considers rights for the poor and the disabled. The Holy Qur'an states,

***"Give the share of the relatives and the poor and the needy."***

And

***"There is a certain right for the beggars and the poor in the properties of the faithful."***

The weak and disabled people who are not able to work and their work is not enough to satify their needs are not obliged to work and take share on themselves and their responsibilities should not exceed their abilities.

It is true that they are unproductive and unable to help development, however, they cannot be deprived

of all rights because they are entitled to them by virtue of the primary principles and the goal-oriented relation between them and the blessings. This cloth has been spread for them as well. “God created the earth for all (not for some).” If they were able and did not do their job, they would be fined by being deprived of this cloth but being unable, their primary right is preserved. Indeed the poor and the needy have the right to the assets of the rich.

## An Essential Difference

One of the differences between the Islamic social philosophy and legal principles may be explain here, According to Islamic divine law, the poor have real rights: But in the secular judicial systems right is caused only by work, production and activity. One of Imam ‘Ali’s followers asked something from the booty which the Muslim soldiers had gained with sacrifice. In his reply, the Imam said, “This belongs to those who have fought. If you have been with them and have suffered with them, then you can have a share. Otherwise it is the fruit of their efforts and for their own mouth, not for the mouth of others.” Naturally, whoever labors and acquires something in a legitimate way, it shall belong to him. It is illogical to expect you to work and gain something and put it into somebody else’s mouth.

## Social Rights

Right is respected in Islam. The rights of people are extremely important. Justice is sacred. Betrayal of rights specially public rights is regarded the worst kind of betrayal in Islamic ideology. ‘Ali (A.S.) said, “The gravest betrayal is betraying the people and the worst fraud is deceiving the Muslim leaders.”

Islam became a universal religion in a very short time and found followers all around the world. Why? Was it only for a set of simple moral instructions? Had Islam not endeavored for social reforms, it would have been impossible to gain any success in its moral instructions. Islam called for justice, rights, freedom, equality and the elimination of any kind of discrimination. These factors caused a new world. Whatever harms and damages Islam suffered were due to the transformation and disregard of these major principles.

Yes, rights are respected in Islam. Justice which protects these rights is sacred. The respect for rights and justice in Islam, has always been the most important factor in developing Islam. In Islam, rights have been predicted and regulations established based on such rights which show the ultimate grace, favor and scrutiny of this religion .

## Right of Companion

During his caliphate, Imam ‘Ali (A.S.) went out of Kufa, the center of the Caliphate one day on a mission. As was his wont he did not take on any guard; he traveled alone. Upon his return he encountered a kitabi (follower of a Divine religion) i.e. a Christian or Jew or Zoroastrian. The man did not know Imam

‘Ali. They asked each other their destinations and they found out that a large portion of their way was the same. They agreed to travel together. They came along talking together until they got to the junction where their paths diverged. That man went on his way, and Ali left the Kufa road and followed him. The man said, “You said you wre going to Kufa, didn't you?”

Ali answered, “Yes.”

“Then why don't you go that way?”

Ali said, “Our prophet has instructed us that when two persons travel together and enjoy each other’s company, they find a right toward one another. As I enjoyed your company on this trip you have proved a right and I want to follow you for a while in token of gratitude and appreciation. The man fell into deep thought. He raised his head and said, “The reason for the rapid development of Islam has been the benevolence and greatness of your Prophet.” He did not know ‘Ali at that time until one day he came to Kufa and saw ‘Ali in the position of the Caliph and found out that his companion on that trip was nobody but ‘Ali Ibn Abi Talib, the Caliph of the time. He immediately converted to Islam and became an apostle of Imam ‘Ali.

## The Name ‘Ali is Identified with Justice

The name ‘Ali, was later identified with justice. His tradition and manner of government was always an example with which people reprimanded other Caliphs. One year, when Mu’awiyah was in Mecca for Hajj, he searched for a woman known for her devotion to ‘Ali and her enmity to Mu’awiyah. He sent for her and asked her, “Do you know why I summoned you? I called you to ask why you like Ali and hate me.” She answered, “It is better not to talk of this subject. Mu’awiyah insisted on his demand. The woman said, “Because he was an upholder of justice and equality and you fought him without any reason. I like ‘Ali because he loved the poor and I am an enemy of you because you shed blood and separated the Muslims and are unjust and prejudiced in judgment and follow your desires.” Mu’awiyah got angry. However, he overcame his anger and as was his habit, he showed kindness and asked, “Have you ever seen ‘Ali in person?” She said, “Yes, I have.” Mu’awiyah asked, “How did you find him?” She said, “By God, I saw him in a state not possessed by crown and government as you are.”
“Have you heard his voice?”
“Yes, I have. It lightens the heart and purges sorrow as the olive oil removes rust.”
“Do you wish anything?”
“Will you give whatever I ask?”
“Yes.”
“Then give me one hundred red camels.”
“If I give you what you want, will I find the same position as ‘Ali in your heart?”
“Never.”

Mu’awiyah ordered to give her one hundred camels and said, “By God. if ‘Ali were alive, he would not

give you even one of these camels.”

The woman answered, “By God, he would not give me even one single hair of them, because they belong to all Muslims.”

‘Adi Ibn Hatam Ta’i was one of the great disciples of the holy Prophet and a lover of Imam ‘Ali. This man converted to Islam in the last years of the holy Prophet’s life and became a faithful Muslim. When Imam ‘Ali was the caliph, he was at his disposal and three of his sons called Turaif, Turfah and Tarif were killed in Siffin, fighting for ‘Ali (A.S.) After the martyrdom of Imam ‘Ali and the stabilization of the caliphate for Mu‘awiyah, they happened to encounter.

In order to make him say something about Imam ‘Ali as he wished, he tried to remind him of the martyrdom of his three children.

Therefore he asked, “What happened to your sons, Turfah, Turaif and Tarif?” ‘Adi said serenely, “They were killed in Siffin in front of ‘Ali.” He added the words “in front of ‘Ali” to show his satisfaction and honor. Mu’awiyah said, “‘Ali did not treat you justly to dispatch your sons to the battlefield and leave his own sons back to survive.” ‘Adi said, “In fact I did not behave justly toward ‘Ali as he was killed and I survived.” Mu’awiyah saw that his plan proved futile. Changing his tone, he said, “Describe ‘Ali to me.” ‘Adi asked to be excused. Mu’awiyah said, “Impossible. You have to." Thus ‘Adi said, “I swear by God that ‘Ali was strong and judicious. He talked with justice and settled disputes with certainty. He was versed in knowledge and science. He hated the luxury of the world and liked the night and the nocturnal solitude. He cried much and thought plenty. In his solitude he questioned himself and repented the past. A simple life he conducted and simple clothes he wore. When he was among us, he was none of us. If we asked him something, he would comply. If we went to visit him, he treated us warmly and affably. Although he had no chains or jails, he had such great eminence that we did not dare to talk in his presence; he was so august that we did not raise our heads to look at him. When he smiled, his teeth glowed like pearls. He respected the faithful and was kind to the poor. By God I saw him one night with my own eyes standing in the altar worshipping the Almighty while darkness fell on everything. His tears rolled down his beard. He twisted about as one stung by snake and cried like mourners. It is as if I heard him say, “ You are bothering me and showing your face to me. Go and deceive somebody else. Your time has not come. I divorced you three times, irrevocably, and there shall be no return. Your joys are trivial and you value little. Oh, Oh some little provision, a long trip and few companions.”

When ‘Adi got to this point, Mu’awiyah started crying, wiped his tears by his sleeve and said, “May Allah have mercy on ‘Ali. He was true as you said. Now tell me how you feel in his absence.” ‘Adi said, “Like a woman who has embraced a child and whom you are about to behead.” Mu’awiyah asked, “Do you ever forget him?” ‘Adi answered, “Does time permit me to forget him?”

In Irshad, Shaykh Mufid states, “The term of ‘Ali’s Imamate, the Commander of the Faithful, was 30 years after the Prophet and he ruled for only five and a half years and this short period was spent in

combating the hypocrites. He goes on to say that his death occurred on Friday night, 21st of Ramazan near dawn; he was struck by a poisonous sword by Ibn Muljam Muradi and died two days later.

Kafi states, “Then, Imam ‘Ali said: there is no God but Allah until his exalted soul soared to Heaven.” May God glorify him and his sacred family.

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