

{To Thee we Sent The Scripture in Truth }

Legality and Legitimacy between Theory and Reality

Abdulrahman Al Salmi

Some researchers consider legitimacy and legality synonyms. Actually, we can differentiate between them in view of the fact that legitimacy is a general approach but legality means customs, traditions and laws that organise people's lives in society, including the exchange and practice of authority. Some new *mufassirin* (Qur'anic exegesis specialists) explain the law through the following Qur'anic verse: 'For each We have appointed a divine law and a traced-out way',⁽¹⁾ according to the abovementioned comparison. Legality means the law, traditions and customs, and their associations; their non-application badly affects the general

organisation of society and the state. On the other hand, with regard to the holy verse, legitimacy is compared to the 'traced-out way', which includes truths and basic distinguishing features of a certain society, and if all or some of them were not applied, the system would collapse or turn into total chaos.

It is clear that this differentiation compares legitimacy with the basic legality of society and state, and its signs in the historical experience of our nation: the one nation, one house, one authority and one legislative and legal system.

It is natural in communities and states, which harbour and develop a certain system of assembly, living, dealings, governance and communication with the outside, to have it distinguished in its details, though not in its general features, with probability and obscurity due to the diverse experiences of different generations and groups. This results

in the diversity or disparity of means and methods of application or practice and usually results in conflicts that occur through these means and details and their legality. However, disagreement about principles or legitimacy is rare because if the disagreement about them spread it would threaten the whole system. On the other hand, differences of details are possible, although people usually incline to the general view and convention.

One example from the historical Islamic experience is when the Prophet (PBUH) passed away. There were discussions regarding some issues that came under legitimacy and others under legality. Among the discussions in the former category was the dispute about the unity of authority and whether there should be one emir or two. When he realised that the Qurashieen (emigrants of Quraish) would not relinquish authority to the Ansar (original residents of Al-Madinah), the Ansari Al-Hbab bin Al-Munther called for having two emirs, one from the *Ansar* and the other from the Qurashieen.

Then, Abu Bakr responded to the proposal saying that it was not possible to have two swords in one sheath. After that, the principle of the unity of authority and the ruler prevailed because it is, according to the Holy Qur'an, one of the principles of the right path. The Sahabah (Companions of the Prophet), who were from Quraish, insisted that the Imamah should be from Quraish, based on what they narrated about the Prophet (PBUH) — that Imams should be from Quraish and that priority be given to Quraish. Thus, after some members of the Ansar, Muhakimah, Qadariyah and Muatzilah accepted this as one of the principles of the system and Ibn Khaldun (808 AH) considered it a result of the power of Quraish's tribal spirit, which later declined, the issue of the Imamah of Quraish could be classified under legality not legitimacy. Indeed, the Imamah of Quraish deteriorated after the 5th century AH and many were elected from outside Quraish, even non-Arabs, as caliphs and emirs of Muamneen, without considering this change as a violation of legitimacy. The same thing happened with

those who called for the giving of authority to certain people from the family of the Prophet. They considered what they called for as one of the principles of the system and some of them established states and appointed sultans and caliphs, but the dispute continued between those people and the majority who did not believe in its necessity and legality.

There is another difference that clearly shows the differences between legitimacy and legality, or between principles and variables. How did the Emir of Muamneen come to power? The people, who represented the majority, did not believe the call for giving family members of the Prophet priority to seize authority, but believed that the emir should come to power through *shura*, although there are no confirmed references or rules for this kind of *shura*. The four caliphs were selected differently but Abu Bakr came to power through direct election. Similarly, Omar came to power after Abu Bakr and the people nominated by Omar agreed on Othman, who was one of six nominees. Ali was directly

elected in the *Masjid an-Nabawi* (Mosque of the Prophet) in Al-Madinah. Since the 1st century AH controversy has taken place about people charged with authority, or people of the *shura* ie. people who name nominees from whom a leader is selected. However, in the Umayyad and Abbasid dynasties, the system was different and the caliph who was in power nominated his son or brother, who was then elected by the people. The interesting thing is that no one considered that as a violation of legitimacy, even Al-Mawardi (450 AH), who in his book *Al-Ahkam A'Sultaniah* said that only one person could be charged with authority and that was the emir of *Muamneen* himself, who nominated his son or brother.

Actually, what can be understood from these issues is not that a dictatorship prevailed or that the jurisprudents complied with their leaders' desires, but that there is a mutual factor between legitimacy and legality. This factor is the same that called for unity of authority, and is the aspiration for unity and stability because if there was no system for

exchange of authority before the vacancy of the position of the head of state, then there was no use going to the *shura* because going to *shura* after the vacancy would mean chaos and instability. Therefore, semi-royal traditions prevailed to maintain stability and avoid *fitnah*(2) eg. insurgence or conflict with the authority. This is the reason for the great fear that the jurists and the public have of *fitnah* and the intensive call for unity and support of the imam. However, some opposing voices remained and did think the fear from chaos or *fitnah* was a just reason to give up the *shura* principle. In general, in the classic eras, *shura* ceased to be part of the system or the legitimacy, but the controversy remained and escalated in modern times considering *shura* part of the legality or an essential component for achieving it.

Recently, there has been interesting discussion over the legality of a conqueror who comes to power without being a member of a royal family but through the help of a developing military group.

Long debates took place between constitutional jurists regarding the legality of a conqueror. Some said that recognition of a conqueror is not permitted for any reason because it threatens legality and in case it gets repeated and accepted by people because then the legitimacy or the system will be threatened, which means a threat to the unity of the nation and authority. However, some said that it is possible to recognise a conqueror provided that he is capable of maintaining internal unity, defeating enemies, preserving traditions and ensuring justice. Thus, this strong trend considered legitimacy a functional matter and not a principled one. Supporters of this view give examples of successful cases, for example when Noor A'Deen Zanki took over power from the Salajika. He initiated development, united his people and fought crusaders. Another example is Salah A'Deen Al-Ayoubi who took over power from Ibn Noor A'Deen Zanki. He united eastern Arabia, conquered Al-Quds, and established a system for justice and welfare.

Thus, legitimacy both in the past and present is concerned with the basics of the nation or state, such as sovereignty of law and working for the good of people. However, legality is subject to development and change according to circumstances. Certainly, these issues, that are addressed by the Holy Qur'an and experienced by our nation throughout history, are still very important in the present and will be in the future.