

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

يَرْفَعُ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ

وَالَّذِينَ أُوتُوا الْعِلْمَ دَرَجَاتٍ

**Allāh exalts those of you who
believe and those who are given
knowledge to high ranks**

Holy Qur'ān (58 : 11)

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Address:
Zartosht Gharbi St., Corner of Waliyy-e 'Aşr Ave.,
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Mailing address:
P.O. Box 15815-1956
Tehran, Islamic Republic of Iran

Phone:
+98-21-890220-25
Ext.: 11, 12

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1. To provide a forum for scholars to make analytical studies of Islamic topics and themes.
2. To advance the cause of better understanding of the Qur'ān and the *Ahl al-Bayt's* ('a) contribution to Islam.
3. To publish English translations of Arabic and Persian works of Muslim scholars.
4. To endeavor to find Islamic answers to questions relating to the social, political, and moral problems of today.

* * * * *

Scholars and writers from all over the world are invited to contribute to this journal.

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SYSTEM OF TRANSLITERATION OF ARABIC CHARACTERS

CONSONANTS :

ء '	ز z	ق q
ب b	س s	ك k
ت t	ش sh	ل l
ث th	ص ṣ	م m
ج j	ض ḍ	ن n
ح ḥ	ط ṭ	ه h
خ kh	ظ ḏ	و w
د d	ع ʿ	ي y
ذ dh	غ gh	
ر r	ف f	

VOWELS :

Long: ا ā	Short: ا a	Doubled: اِىّ iyy (final from i)
آ Ā	أ u	أِىّ uww (final from ū)
و ū	إ i	Diphthongs: اِو au or aw
ي ī		اِى ay or ai

Contents

Fiqh

- Position and Domain of *Hukm* (Decree) and *Fatwā* (Verdict) 9
Muhammad Şādiq Mazīnānī

Law

- The Codification of International Humanitarian Laws and the
Concept of Humanitarian Laws in Islam part 1 41
Sayyid Muştafā Muḥaqqiq Dāmād

Political Thought

- Life and Liberty 79
Muhammad Muntaẓir Qā'im

Philosophy

- The Fundamentality of Existence in Mullā Şadra's Philosophy 103
Muhammad Taqī Mişbāḥ Yazdī

Islamic Personalities

- Mir Hāmid Ḥusayn 109
Savvid 'Alī Şahbāz

Report

Introduction to the Centre for Translation of the Holy Qur'ān into Foreign Languages	125
The Second Meeting of General Assembly of The <i>Ahl al Bayt</i> ('a) World Assembly	153
Year Index of the Message of Thaqaalayn	158

Position and Domain of *Hukm* (Decree) and *Fatwā* (Verdict)

by Muḥammad Sādiq Mazīnānī

After the triumph of the Islamic Revolution, the principle of ‘*Wilāyat-e Faqīh*’ and its related issues such as the domain of and contradiction or interference between *ḥukm* (decree or ruling) and *fatwā* (verdict or opinion) became the most important points of discussion among the people. Proper clarification of these subjects has an important role in the movement and direction of the society.

A Muslim will have a proper understanding of his various Islamic duties such as individual, social, devotional, political and educational, and will discharge them correctly after having known these subjects. We can understand the deep and fundamental role of these subjects and their relation with human interests by going through the religious texts and the sayings of learned men on various points of jurisprudence.

This article is an attempt to probe the above subjects in order to prepare ground for a thorough research. The following questions will make the subject more clear:

- Do *fatwā* and *ḥukm* carry the same meaning or are they different?

- If they are different, what is the difference?

- What should be done in case of contradiction (*ta'āruḍ*) or interference (*tazāḥum*) between *fatwā* and *ḥukm*?

- What is the area of *fatwā*?

- What is the extent of domain and area of *ḥukm*?

These questions have existed since long and Shi'ite jurists have provided answers to them as per the different cases. In this article we answer the above questions in brief as a preface to the discussion before analyzing and dealing in detail with the statements of the great scholars

Fatwā as termed by the jurists, is stating of a view by a *faqīh* in religious and related matters on the basis of divine sources, while *ḥukm* is issued by the *ḥākim* (supreme religious leader or ruler) for complementation of religious decrees and compulsion on performance or avoidance of an action for any best reason. Therefore *fatwā* and *faqīh* are different from *ḥukm* and *ḥākim*.

The relation between people and jurist is the relation of a specialist or skillful person with non specialists or lay persons and nothing more. But the people's relation with the ruler is the relation of the Ummah with the Imam. The *faqīh* thus possessing qualifications of leadership is the *ḥākim* and leader of the Ummah.

The territory of a *faqīh's fatwā* is confined to himself and his followers, and is not binding on other *fuqahā'*. However, the *ḥukm* of the *ḥākim* is not only to be followed by other *fuqahā'* but is also binding even if it does not coincide with their own *fatwā*. Therefore in matters of contradiction, the *ḥukm* has the priority over *fatwā*.

In the event of the ruler issuing a *ḥukm* on a certain subject, other *fuqahā'* and leaders cannot contravene it. All people including the followers of other jurists must follow the *ḥukm*. Such a *ḥukm* is valid for other jurists as well.

But if a jurist issues a *fatwā* on a subject, it is possible for other *fuqahā'* to have a different opinion. For example a jurist issues a verdict that a *qirā'at* should be recited three times during prayer while another jurist states that reciting one time is enough. In the matter of *fatwā*, every follower must follow his own *mufti*.

On the basis of the above explanation, a *faqīh* or a *mufti* could be more than one at one time but the ruler should be one and single because multiplicity will cause a disturbance in the system.

It is possible that one might be a *mufti* or a *faqīh* but not a *ḥākim*.

A just *faqīh* can be both a religious authority and *ḥākim*. Of course, besides possessing qualifications of leadership and religious authority, the *ḥākim* should also possess qualifications of a *mufti*. In addition to this, the leader should have the qualities of efficiency and decree. He should be brave enough and decisive and should have enough knowledge of the political issues of his time.

The above are brief answers to the questions. Now we deal with broader explanation and interpretation and give supporting reasons to those answers.

As mentioned, the difference between *fatwā* and *ḥukm* has been under consideration since long and Shi'ite *fuqahā'* have discussed them in their works on *uṣūl* and *fiqh*, such as Muḥammad ibn Makkī known popularly as Shahid-e Awwal in his book *Al-Qawā'id wa al-Fawā'id* 1, Shaykh Muḥammad Ḥasan Najafī (author of *Jawāhir al-Kalām*) in *Kitāb al-Qaḍā'* 2 and *Al-Amr bi al-Ma'rūf wa al-Nahy 'an al-Munkar*,³ Muḥaqqiq Karakī in *Ḥāshiah*-his commentary on *Sharā'i' al-Islām*,⁴ and several others.⁵

Shahid-e Awwal writes:

The difference between *fatwā* and *ḥukm*, since both are divine orders to be followed by those on whom they are binding, is: *fatwā* is a statement derived from divine decree explaining the rule on a certain subject, but *ḥukm* is a statement defining option or obligation in controversial worldly matters, provided *ijtihād* and the various views on the basis of sources, conform to each other.⁶

In explanation of the above statement, Shahīd-e Awwal writes that decree is a creative intention while *fatwā* is only a statement derived on the basis of divine orders. For example choice and obligation are two types of *ḥukm*. Most of the *aḥkām* create obligations, but several others create liberation such as releasing a prisoner or an order to free a land which has been left idle and unused after being fenced with stones.

According to Shahīd-e Awwal if and only if the grounds for issuing a *ḥukm* is definitely weak, such as 'Awl wa Ta'ṣīb or death of a Muslim against an unbeliever, and if the ruler issues a *ḥukm* in this regard then it is necessary to contravene it. He says that decree in acts of worship has no validity, and if a *ḥākim* were to issue *ḥukm* on the correctness or incorrectness of one's prayers, it will have no effect at all.

In short, in Shahīd-e Awwal's view, in the cases of *fatwā* the contravention of the jurist or the follower cannot be stopped because a *faqīh* is not bound to follow another *faqīh*. The follower too can refer to another jurist and in the event of contradiction, he can select the statement of the most knowledgeable *faqīh* or else he is free to follow any one of them.

As for the *ḥukm* in any particular case to settle differences, it is not allowed to contravene it, because if a second decree contravenes the decree of the first, then it would be possible for the third one to contravene the second's. In this way the laws will never be stable and this instability is not meant by Divine

legislation in appointing the *ḥākim* to settle and systematize the affairs of Muslims.⁷

The gist of Shahid-e Awwal's statement means that *fatwā* is an expression of a *mujtahid* derived from divine law in both material and spiritual affairs, but *ḥukm* is an order issued by the ruler on the expedient interests of the people. The opposition to a verdict by experts is not objectionable. For instance: if a jurist were to issue a *fatwā* that blood found in eggs is unclean, another jurist --on the basis of his derivation from *Shari'at* texts-- might issue a *fatwā* on its being clean. Furthermore the follower (of a particular *faqih*) has the right not to follow the *fatwā* in such cases and refer to a more learned and pious jurist. But the rejection of or opposition to a *ḥukm* is considered illegal as it will disturb the system.

From the definitions given by some jurists such as Shahid-e Awwal, it can be deduced that *ḥukm* issued by the ruler is pervasive in all matters other than acts of worship, but in acts of worship his *ḥukm* or defining of public interests has no validity at all. Acts of worship, from the viewpoint of individual interests do not come under the domain of the ruler's *ḥukm*, but their social aspects fall under his purview. Therefore, the *ḥākim* can impose on people the performance of the obligatory *Hajj* and the giving of *Zakāt*, and in certain cases, for good reasons, can stop them from the *Hajj*.

In addition to this, the reasons given by some on absolutism of the *faqih's* power appears to be inclusive of all cases and will be dealt with in the other chapters.

The writer of *Jawāhir* has given the difference between *fatwā* and *ḥukm* as

It is meant by the former The report of a law of a general nature from god such as the uncleanness of what is touched by wine or urine, but the *ḥukm* is an executive order of the *ḥākim* in religious or regulatory law or in both,

regarding a particular case, and is not from Allah the Exalted.⁸

On the basis of the above statement, the following two differences emerge between *fatwā* and *ḥukm*:

- 1- From the point of its being narrative or creative.
- 2- From the point of its subject being particular or universal.

On the basis of the above definitions there are three differences between *fatwā* and *ḥukm*:

1. *Ḥukm* is issued by a *ḥākim* other than Allah but a *fatwā* is reporting from Allah.

2- The subject matter of the *ḥākim*'s *ḥukm* is a particular subject. In other words his decree is conformity of a particular case with the general laws of the *Shari'ah*, but the subject matter of *fatwā* is of a universal nature and covers several fields and many people.

3- On the basis of definition of the writer of *Jawāhir*, it must be stated that *fatwā* itself will fall under the decree of the *ḥākim* since *ḥukm* means the execution in a particular case of the *fatwā*.

Critic

Is the ruler's *ḥukm* confined to the execution of religious rules, as pointed out by the writer of *Jawāhir*, or in addition to that, does the *ḥākim*, on the basis of *wilāyat* and leadership, has a right to obligate people in certain cases such as application of prices, prohibition of hoarding, and etc, because of non existence of laws of *shari'ah* in this regard?

We believe the ruler's *ḥukm* is not limited to religious laws. Allah, the Supreme Legislator, while defining laws and duties for everything, has given authority to the Islamic *ḥākim* in matters related to certain incidents and sectional events which are of a varying nature depending upon the different times and places, so that he can issue the necessary *ḥukm* in this regard as among the legal responsibilities of his leadership and authority.⁹

In the verse of the Holy Qur'ān "*Obey Allah and obey the Messenger and those in authority from among you*"(4:59), the obedience to the Prophet and the one in authority (*waliyy-e Amr*) has come separately and independent of the obedience to Allah. Obeying Allah is to comply to the orders that He has issued and conveyed through the Prophet. But obedience to the Prophet and the *waliyy-e Amr* is obedience to the orders issued by the Prophet and the one in authority as part of their responsibilities for administering the affairs of the society which they lead. These orders are of three types:

1. All regulations issued directly or indirectly by the *ḥākim* for implementation of laws of the *shari'ah* are considered governmental laws such as directions to the judiciary, defining of the penal code, municipal and urban development affairs, circulations for government offices and organizations as well as measures for execution of religious laws, and determining their priority in relation to the administration of the country.

For example, in the verse "*and the man who steals and the woman who steals, cut off their hands...*"(5:38), although all Muslims are addressed, but it is clear that its execution is the duty of the Islamic government. It is not that everybody can cut the hands of the thief or execute other punishments, because if such is the case the whole social system will become disorderly. It is obvious that since the execution of political and social laws is part of the duties of the Islamic ruler, the matter of determining where and how it should be applied will also be his duty.

2- Determining the interests of the society and the government and making laws for them is part of the authority of the *ḥākim*. Sometimes the *ḥākim* can himself determine the interests and sometimes he can take help of learned and specialized persons or leave them to a person or group of persons.

The domain of these instances are the cases which have not been deemed compulsory or forbidden and are included in the

category of imputable cases where the interests of Islam or the Ummah, necessitates their prohibition or compulsion. Forbidding something or making it compulsory depends on the time and circumstances and the view of the Islamic *ḥākim* therein, such as traffic rules, export or import of certain goods, hoarding of items, application of prices on goods, and etc.

3- It is possible that at times *tazāḥum* (interference) occur between implementation of religious laws and certain governmental laws issued by the *ḥākim* in the interests of Islam and Muslims. For example, in view of the interests of Islam and Muslims, Permission may not be granted to perform *Ḥajj* or any other precept or some limits may be put on ownership or some properties are limited or taken away, which indicate interference between the primary decree and governmental law.

In such cases the Islamic *ḥākim* issues a decree with a view to the priority of the most important of the two subjects which means the other is temporarily shelved. There have been many such instances in the administrations of the Prophet (ﷺ) and Imam 'Ali ('a) which are outside the purview of this article and requires a separate study.

Two points demand close consideration here:

1- Is the ruler's *ḥukm* a source for religious rulings, and does his *ḥukm* add anything to divine laws?

2- How should government laws be implemented? Should the *faqīh* himself issue and execute all the government laws throughout their different phase including the execution one? Can other people and organizations substitute for the *ḥākim* in Islam?

Definitely, the Islamic *ḥākim* has neither power nor authority to add to or delete anything from the code of divine laws, because Allah the Almighty has declared the completion of the religion by revealing the verse: "Today, I have perfected for you your religion..."(5:3), while the Prophet has conveyed and specified all aspects of the regulations of the *Shari'ah*. Therefore, no law can be

added or deleted by the *ḥākim* as is clear from the following narration:

The Permissible of Muḥammad (ﷺ) is permissible forever till the Resurrection Day and the Prohibition of Muḥammad (ﷺ) is prohibited till the Resurrection Day.¹⁰

Although rules and decrees of ruler are as valid and indispensable as religious laws but they are not religious injunctions and in their stability they are function of experiences which have brought them into existence and they change into better rules with the changes of human society. Of course this is other than the principle of *wilāyat* which is one of the stable laws of religion and cannot be changed.¹¹

Therefore, if in cases where the *ḥukm* issued by the *waliyy-e faqih* emphasizes priority over permissibility of a permissible or prohibition of a prohibited subject, it will not be considered religious law but only a matter of priority of some divine laws over the others depending on the circumstances. For instance: the *ḥukm* issued by Mirzā Shirāzī on prohibition of use of tobacco in Iran during Nāṣir al-Dīn Shah Qājār's time, is not of religious nature but of governmental type based on the necessity of obeying the *waliyy-e Amr* according to the verse: "Obey Allah and obey, the Messenger and those in authority from among you."

The mode of implementation of government laws:

An Imam or Islamic ruler is the leader of people for both religious and political affairs. Implementation of laws, enactment of government rules and administration of the country are part of his responsibilities. Of course, he alone cannot perform all the tasks and responsibilities in this context. On the basis of the necessity, he establishes a system and appoints some people to execute the rules, run the country, enact the laws and sometimes to distinguish the subjects and legislate government laws. He himself supervises the entire system.

Imam Khumaynī did so and he established the ‘Council of Expediency’ for determining the interests of the government in the framework of Islam and enactment of government laws. The Imam left distinction of priorities to the Islamic Consultative Assembly or Parliament:

All affairs related to the safety of the Islamic Republic, the commission or omission of which disturbs the system; and all the necessary matters, the commission or omission of which causes corruption; or whatever that causes difficulty, after being determined by the majority of members of parliament with clear emphasis on the temporary nature of the problem that would automatically vanish once the subject is resolved; are permitted to pass and approve (the bill).¹²

Legitimacy for Issuing a Decree

Legitimacy of government rules is bound to the issue of *wilāyat*, because the administration of society on the principle of *wilāyat* necessitates that the Islamic ruler is entitled to issue such rules.

The Islamic government cannot control the country without the right of enacting such a rules otherwise anarchy will prevail in Society making both the government and *wilāyat* ineffective. If the *ḥākim* is prevented from exercising this authority it will be like assignment of a school principal with no authority in management of school affairs, teachers and time tables, which are all part of his duties.

In addition to this, the entrusting of religious affairs to the Prophet (ﷺ), the infallible Imams and after them to the *fuqahā*, entitles the Islamic ruler to enact rules and regulations on the basis of expediencies to administer the Society.

Imam Ṣādiq (‘a), says:

“Allah taught the Prophet (ﷺ)... then He entrusted the affairs of the religion and the Ummah to him so that he can manage the affairs of the people with prudence.”¹³

Although in this narration the Prophet (ﷺ) and in some other narrations the infallible Imams¹⁴ have been mentioned but the base is leadership and general management of the people. Whoever is assigned by God as the *waliyy* should naturally has been given extensive authority to manage the Ummah and affairs of the religion entrusted to him. This could be understood from the last words of the above-mentioned narration because it is a necessity of every government without which one cannot administer the society.

Domain of Decree and Verdict

This topic is based on permission of inference and *ijtihad* in *ahkām Shar‘i* and also on the discussion on *wilāyat-e faqih* and the power and authority of the Islamic ruler. There are various viewpoints in this regard:

1- A group known as “*Akhhbāriyyin*” believe that relations between *faqih* and *mufti* is the same as relations between all common people. This group rejects *ijtihad* and the right to issue a verdict for a *faqih* or to follow a *Mujtahid* for a laymen. Their viewpoint thus excludes both verdict and decree. This group does not believe in any role for the *faqih* except narration.

2- The *Uṣūliyyin* believe that a jurist has the right of *ijtihad* and inference, and that his verdict and view is authority both for himself and for the people.

The late Narāqī in ‘*Awā'id al-Ayyām* is among those who believe in the absolute *wilāyat* of a *faqih*. Believing that issuing verdicts is the right of *faqih* and writes:

“Issuing a verdict is among the duties of the *fuqahā*’ and everyone is bound to follow them and act according to their verdicts.”¹⁵

Narāqī cites reasons and proofs for his statement and on the basis of several narrations removes the doubts and answers the questions. On the domain of verdict and decree he writes:

The verdict and its binding becomes obligatory in cases where the *mujtahid* derives his understanding from and makes reference to the statement of the Divine Legislator (Allah) and in cases where he infers, according to his understanding, Divine intention regarding applications related to religion whether it is religious law or regulative law or is a subject or a predicate or related to religious jurisprudence. *Ijtihād* and verdict are confined to the above only and does not cover all aspects of religion.

Narāqī explains the above by giving an example, and the following is the gist of his explication:

The following of a *faqīh* is necessary in all cases of secondary principles of religion. For example if he infers that wine is the juice of grapes and is unclean and should be strictly avoided in prayers, it is necessary for him to issue a verdict which is of binding nature for his followers. His followers should adhere to the subject determined “wine is the juice of grapes” and should understand the predicate, i.e. the necessity of its avoidance in prayers. Thus in his verdict when the predicate is applied to the subject, “uncleanness” and the necessity of avoiding grape juice becomes clear.¹⁶

3-*Uṣūliyyīn* and the jurists who believe in the *faqīh*’s right of *wilāyat* over verdict and regard the issuing of verdict as a sufficient

requirement (*wājib kifā'i*), are of two different views in domain of the ruling based on the limits and powers of the Islamic ruler.

Some of them are of the view that the decree of the Islamic ruler is limited in such cases as authority over property with unidentified owners, Supervisory affairs (*umūr-e Ḥisbīyyah*) and the like, while others are of the view that the decree of the Islamic ruler has wider authority. According to the second viewpoint, in any case wherein the Prophet (ﷺ) and the infallible Imams of his Household had *wilāyat* and the right of authority, so do the *waliyy-e faqih* or Islamic ruler has authority and his decree is binding.

On the basis of the first view, the *waliyy-e faqih* has the right of interference in affairs such as property without any determined owner and in similar cases of jurisprudential supervision. In such cases the *faqih* has priority over others and in his absence the just believers. However, only when there are no just believers found in the society to administer the affairs, others including lax Muslims can take over.

But on the basis of the second view the Islamic ruler can discharge all affairs as an absolute ruler can. He can call for war, give instructions for peace, issue orders for punishment, levy taxes, etc.

In his book *Ṣalāt al-Jumu'ah* the late Muḥaqqiq Karakī (d. 940) says:

Shi'ite jurists are unanimous that a just Imami *faqih* who meets all requirements necessary for issuing verdicts and is regarded as *mujtahid* in religious laws could, on behalf of the Infallible Imams, deal with all cases which require representation or deputising (with the exception of murder and application of penal codes according to some *fuqahā'*). Therefore acknowledging him as the ruler and following his decree is necessary. If necessary, he can sell the property of one who refuses to have respect for rights. He is the guardian of properties of children, the weak

minded, the poor and those who are absent. He can also interfere in the affairs of those who are interdicted, and has all the authority necessary for a ruler appointed by the Infallible Imam.¹⁷

In his support of the absolute *wilāyat* or authority of the *faqīh*, Karakī cites the narration from ‘Umar ibn Ḥanzalah as well as several other narrations. Elaborating on the narration cited by ‘Umar ibn Ḥanzalah, he writes:

The purpose of this narration here is: a *faqīh* possessing all specifications or requirements has been appointed by the Infallible Imams and is their representative in all the affairs where representation is required. Because his holiness (the Infallible Imam) has said: “I have appointed him as ruler for you.” Of course, this representation is not confined to special cases and is general and includes every case.¹⁸

Muḥaqqiq Karakī in his *Risālah Qāṭi‘ah al-Lijāj* provides the following answer to the question: “Can a *faqīh* possessing all necessary requirements be custodian of land revenues in the absence of the 12th Imam?”

“We say: Shi‘ite jurists have not expressed any clear statement in this context, but one who allow the *faqīh*, in absence of the Infallible Imam, authority over the penal code and similar matters as cases of representation of Imamate, should also allow him in this respect (to be custodian of land revenues). Because this is less perilous, especially since the needy and poor people exist in every age, as this right is not restricted to the strugglers and fighters of Islam.

If any one closely studies the life and times of our ‘*ulamā*’ of past such as Sayyid Murtaḡā, Muḥaqqiq Ṭūsī, ‘Allāmah Ḥilli and so on, will undoubtedly find that they

have trodden this path and practically proved this (i.e. *wilāyat-e faqih* and its representation on behalf of the Infallible Imam). These great scholars have written only those subjects in their books about whose authenticity they were sure.”¹⁹

Narāqī has allocated one of the eighty eight chapters of his book “*Awā'id al-Ayyām*” to the subject of *wilāyat-e faqih* and has discussed in detail the powers and authority of *waliy-e faqih*. He writes:

“A just *faqih* has authority in two fields:

1- He has authority over all those that the prophet and Imams had as leaders, aides and protectors of Islam except for cases that consensus or the text has made exception.

2- Any work related to the religious or worldly affairs of people which has to be performed, according to reason, habit, its dependence on material or spiritual affairs, or due to an order for its performance or consensus on it because of harm, loss or difficulty to a Muslim, as well as the affairs permitted by religion without specifying a person or persons who should discharge it and its commission or omission cannot be determined. All these are part of the responsibilities of the *faqih* and he can authorize according to his best judgement.”²⁰

Many past and recent jurists, some of whose names are given below, believe in extensive powers for the *faqih*: Shaykh Mufid,²¹ Shaykh Ṭūsi,²² Ibn Barrāj in “*Muhadhdhab*”,²³ Ibn Ḥamzah in “*Marāsim*”,²⁴ Abi Ya‘lā Sallār Deylamī in “*Marāsim*”,²⁵ Shahid-e Awwal,²⁶ Shahid-e Thānī,²⁷ ‘Allāmah Kāshif al-Ghiṭā’,²⁸ Mir Fattāḥ in “*Anāwīn*”,²⁹ Ḥusaynī al-‘Āmili in “*Miftāḥ al-Karāmah*”,³⁰ Muḥaqqiq Ardebīlī,³¹ Sayyid Muḥammad Āli Baḥr al-‘Ulūm,³² Mirzā Buzurg Shirāzi,³³ the Younger Mirzā,³⁴ Shaykh

Muhammad Hassan Najafi the writer of *Jawāhir*,³⁵ Ḥājj Āqā Riḍā Hamedāni,³⁶ Āyatullāh Borujerdi,³⁷ Āyatullāh Ḥājj Shaykh Murtaḍā Ḥā'iri,³⁸ Āyatullāh Milāni,³⁹ Imam Khumayni,⁴⁰ etc.

Many of the above-mentioned scholars emphasize on the principle of *wilāyat-e faqih* and give explanation and interpretation on the basis of narration to justify and clarify the limits of the power and authority of the *walīy-e faqih*. They conclude that according to the different justifications the jurist has general *wilāyat* in the absence of the Infallible Imam. Since it is not possible to cite the views of all these worthy scholars, we limit ourselves to the statements of the writer of *Jawāhir* and of Imam Khumayni.

Shaykh Muḥammad Ḥasan Najafi, the writer of '*Jawāhir al-Kalām*', the most extensive work of Shi'ite *fiqh* which took him over twenty years to compile, defines the powers of the Islamic ruler in various aspects of jurisprudence. In his book "*Al-Amr bi al-Ma'rūf*" on the discussion on the right of the *faqih* to implement the penal code and punishments, he writes:

From what we have written and from other cases too it becomes clear, with little more focus on the narrations and on the life and times of the Shi'ites especially Shi'ite '*ulamā*' of the period of occultation (*ghaybah*), and in the light of the honoured confirmation from the Imam of the Age (may Allah hasten his reappearance) in the favour of Shaykh Mufid (concerning authority of the *faqih*), that many Shi'ite affairs will remain suspended if we do not believe in the general nature of *wilāyat-e faqih*. It is surprising that some people hesitate in this regard as if they have not tasted *fiqh* or have not understood the explanations, meanings, and secrets of sayings of the Infallible Imams. They have not paid proper attention to the terms ruler (*ḥākim*), judge (*qāḍī*), proof (*ḥujjah*), caliph (*khalīfah*) and the like that the Imams have used for the

fuqahā'. Use of these and similar terms by the by the Imams is indicative of the endeavours of these great personalities for organizing and administering the affairs of the Shi'ites during the period of occultation (*ghaybah*).⁴¹

Imam Khumayni, after discussing the reasons of justification of the principle of *wilāyat-e faqih*, writes in his book *Al-Bay'*:

We conclude from the above that *wilāyat-e faqih* has been confirmed for the *fuqafā'* by the Infallible Imams in all cases where they have *wilāyat* or authority, since they were rulers with absolute authority over the Ummah. If we try to make an exception for a case out of this general rule, we shall require a reason supporting its limitations to the Infallible Imam. Other wise if it is narrated that such a matter is related to the Imam only, or that the Imam can order such a thing, then such authority is proved for the just *fuqahā'* on the basis of the same reasoning.⁴²

The late Imam Khumayni in his book *Wilāyat-e Faqih* has disproved the notion that the Prophet's (ﷺ) authority in state affairs was more exclusive than Imam 'Ali's ('a) or that a *faqih* does not have the state authority of Imam 'Ali ('a) in jurisprudential matters. He writes:

Of course, the excellence or merits of the Prophet (ﷺ) are more than all the creation and then after that the excellence or merits of Imam 'Ali ('a) are greater than any others, but abundance of excellence or merits does not increase governmental authority. All the powers and *wilāyat* that the Prophet and the infallible Imams had in mobilizing armies, appointing governors and state ministers, levying taxes and utilizing its revenues for the benefit of Muslims have been assigned by Allah for the

present government as well, with the difference that the person has not been specified and it means a just scholar.⁴³

He believes that many problems will arise if the generality of this rule is ignored including the right of disbursing the Infallible Imam's share of *Khums* which requires a particular reason. The claim of having the Imam's consent in spending his share will not be a justification, because the current method of expenditure is not such that a better method could not be found for it. Furthermore consent of the owner of a property is not enough to have all exclusive rights over his property.⁴⁴

The late Imam Khomeini elaborating on the absolute *wilāyat* or authority of the *faqīh*, writes:

Wilāyat-e faqīh is part of conventional and rational affairs and has no reality but legal convention. For example, when one is appointed as a guardian in cases such as custodianship or in state affairs then it is not logical to differentiate between this *wilāyat* (authority) and that of the Prophet (ﷺ), the Infallible Imam or the *faqīh*.⁴⁵

As pointed out earlier this is not the special characteristic of the Islamic government but all governments possess such powers. In matters of expedience for the society they will feel their right to interfere and the people have no objection.

Executing Which Ruler's Decree?

Ijtihād and justice are the two basic conditions for executing or putting into practice the decree of a ruler, which means that the orders of an oppressive ruler has no validity at all. It is not only the duty of the people to refuse to obey him but on the basis of the principles of 'enjoining good' and 'forbidding evil', they should take the steps to remove him from power and establish the Islamic government, because obeying his orders and protecting him is violation of the desired aims and objectives.⁴⁶

The question here arises: Can any just *faqīh* exercise *wilāyat* and issue state orders, or are there specific conditions for meeting the requirements of the Islamic ruler and the exercising of *wilāyat*?

It is obvious that due to the considerably expanded area of the ruler's powers, the complexity of affairs, the diversity of subjects which require modern methods of probe, and the recognition of interests and evils in addition to knowledge of jurisprudence and justice, other conditions are also necessary. Therefore, to be simply a jurist and a just person cannot make a *faqīh* the head of a society, since this is a very difficult task with many complexities.

It is credulity to suppose that in the complex world of today the conditions required for an Islamic ruler is simply the same conditions for superintending over *ghā'ib* (absentee) or *qāṣir* properties or almost a judge.

Imam 'Alī ('a) says:

The most deserving man for government is the most capable man for administration of the *Ummah's* affair and the most learned among people in divine laws. He should call the seditious to return to the right path and if the latter were to disobey, should fight him.⁴⁷

The word 'the most capable' is applied to one who possesses complete physical and spiritual fitness. It means, that in addition to physical fitness, he must be superior to all in political acumen, foresight and management.

The phrase 'the most learned in divine laws' is applied to one who is more knowledgeable than others in the laws revealed by Allah regarding government and administration of the *Ummah's* affairs.

“He should be the most pious, the most learned, the bravest and the noblest. He should have the best characteristics.”⁴⁸

There are many narrations in this regard.⁴⁹ Imam Khumayni after reviewing these narrations, says:

If a *faqih* is supposed to be the most learned person in the theological schools but is unable to recognize the interests of the society or differentiate between good and bad people, and in general lacks proper foresight or power of decision in social and political affairs, such a person cannot be considered as a *mujtahid* in social and government issues and cannot be entrusted with the affairs of the society.⁵⁰

On the basis of the above explanation, the Islamic ruler should be a *mujtahid* in government affairs and recognition of the society’s interests, and *ijtihad* in *fiqhī* matters alone is not enough to avail him of this status.

In view of the related narrations, the Assembly of Experts of Iran has included in the constitution of the Islamic Republic, the words administrative capability and foresight, in addition to justice, piety, knowledge of times and valour, as the qualifications of an Islamic ruler.⁵¹

Rationally speaking, a person possessing all these qualifications should be considered the most deserving one for government.

Interference of Decree and Verdict:

What should be done in case of contradiction between a decree and a verdict? For example, if a *mujtahid* issues a verdict saying there is no harm in hoarding in cases other than those mentioned by explicit wordings of divine law; taxation is not allowed except the required *Khums* and *Zakāt*; and family planning

is against the religious laws. But the Islamic ruler who is supposed to have full information of the problems and situation of the Society, issues a decree, saying that anyone who hoards the necessary items and requirements of the society has committed a *haram* act and should be punished; tax, other than *Khums* and *Zakāt* should be paid to the government and that births should be controlled and planned.

The answer is: The decree or *hukm* of the Islamic ruler takes precedence. All people including the religious authorities are supposed to follow the ruler's decree, and on the basis of this argument, no *faqih* can raise his jurisprudence or *ijtihad* as an excuse for violation of the decree nor can he ever oppose the decree.

The late Imam Khumayni says in this regard:

It is obligatory for the just *fuqahā'* to establish Islamic government. If one of them succeeds in establishing the government, it will be compulsory for others to obey him.⁵²

The verdicts of other jurists have validity so far as people's individual affairs and problems are concerned. But where economical and social problems are concerned the verdict and decree of the decree *faqih* must be enforced so as to make order prevail in the society, otherwise anarchy will take over.

Of course, beside ruler's *hukm*, other jurists and experts can freely state their viewpoints with regards to the solving of social problems so that the ground would be prepared for growth and development of thoughts and ideas as well as the sense of responsibilities. Although the views and plans proposed by them may not be enforceable immediately but can find their ways in society if applicable.

In individual affairs which are not at all related to social problems, the followers are free to follow the *mujtahid* who is

qualified to issue the *fatwā*. In this case the verdict of the most learned *faqīh* will be followed. In case of not finding the most learned, then the verdict of the most pious one will be followed. In case both the jurists are equal in knowledge and piety, the follower has the option to follow any one of them he wishes.⁵³

If contradiction or violation of the ruler's decree is correct according to the verdict or opinion of another, then a third person may also be able to challenge the second person's opinion. The result will be anarchy which is definitely against the spirit of Islam and purpose of Allah the Divine Legislator.

Not only do the jurists have a consensus on this issue but it is also rationally correct, since the undermining of the decree of the Islamic ruler will create disorders in the whole system of Islamic rules and regulations. In cases, where any jurisprudential law is likely to bring about anarchy, it is neutralized as a secondary rule. Many such instances of reasoning can be found in judicial books.

Two decrees simultaneously on the same subject indicates the presence of two leaders at a time which has been rejected by Imam Riḡā ('a).⁵⁴ Presence of two leaders at a time is invalid and rejected when they both want to exert influence.

In the case of presence of two Imams, only one of them can exert influence and the other must follow the first one. This was the practice in the time of Imam Ḥasan ('a) when Imam Ḥusayn ('a) was also present.

Such practice is obvious and orderly and the jurists have stated many supporting reasons on the veracity of this principle:

For instance, when Mirzā Shirāzī declared the use of tobacco as forbidden, 'Alā' al-Daulah went to Iraq on behalf of Nāṣir al-Dīn Shah to seek the permission of other jurists, but they unanimously said:

"Mirzā Shirāzī has issued a decree and not a verdict, and therefore it is incumbent for all to follow it."⁵⁵

In response to the request of the government many Iranian religious scholars including Mirzā Āshtiyāni said:

“This decree is issued by Mirzā Shirāzi and his decree should necessarily be followed by both the *mujtahids* and their followers.”⁵⁶

Imam Khumayni, recalling the decree of Mirzā Shirāzi, says:

Since Mirzā Shirāzi’s decree on prohibition of the use of tobacco was a governmental decree, it was obligatory for all jurists to follow it and except for a few, all the great scholars of Iran followed it. It was not a judicial verdict on a dispute between some persons so that one could say that he has given his judgement on the basis of his own reasoning. It was in the general interests of the Muslims and was issued as a state order and as long as the subject (of threat) existed, the decree remained valid and after withdrawal of the subject (tobacco concessions to the British) the decree was also withdrawn.

The late Mirzā Muḥammad Taqī Shirāzi’s decree, when he called for holy struggle (against the British colonialists in Iraq), of course as a form of defense, was obeyed by all scholars since it was a governmental decree.⁵⁷

From the above statement it could be deduced that there may be contradictions or difference of opinions amongst other jurists in judicial decrees of the ruler but it is not so in the case of governmental decrees. Although in the former case also the ruler’s decree takes precedence over that of other *fuqahā’* and should not be opposed because the conditions for the ruler’s judgement as given in the *Maqbūlah* of ‘Umar ibn Ḥanzalah does not say that none of the opposing parties should not be the *faqih* possessing all necessary conditions. Basically, a dispute requires enmity and it is

not that the persons quarreling should always be other than the jurist. It is possible for a *faqīh* possessing all necessary requirements to have a quarrel with someone. Here the cause of the dispute necessitates the ruler to issue his decree which is not only binding on the antagonists but on all others concerned, and no one has a right to oppose it.⁵⁸

On this subject, the writes of *Jawāhir* in his discussion on hoarding, states:

If the hoarder himself is a *mujtahid*, the decree *mujtahid* can force him to sell the goods or apply a particular rate on his goods. This is possible even if the Islamic ruler is junior to the hoarder, and if there is no *mujtahid* as the ruler then his equitable followers can force him to stop hoarding.⁵⁹

The martyr Āyatullāh Bāqir al-Ṣadr says:

If the Islamic ruler issues a decree in case of expediency, all Muslims are obliged to follow it. Even those who believe that the expedience cited by the ruler is not important, cannot oppose it.

For example, although the religious law has forbidden hoarding of certain basic items, the Islamic ruler can forbid the hoarding of all items and can apply the price he feels suitable. If, with a view to the expedient interests, he forbids hoarding of items not specified by religion, it is necessary for others to follow him.⁶⁰

Interference of the Jurist's Action with the Ruler's Decree

If it is supposed that in the period of absence (*ghaybah*), the qualified jurists have been confirmed to *wilāyat* by the Infallible Imam, then does it mean that all just jurists having the necessary qualifications for representation (on the Infallible Imam's behalf)

have been confirmed as rulers and all of them have the right of exerting their *wilāyat* and issue decrees? If so the question of contradiction of the jurists with the decree *faqih* will arise. For example if the Islamic ruler appoints a custodian of endowments or a Friday prayer leader, can another *faqih* dismiss him or can he appoint some one else for the said posts?

The answer is more or less obvious according to what we discussed earlier, because the undermining of the system breeds corruption, and hence any interference or disturbance by others is not permitted. Furthermore the reasons of *wilāyat* and representation does not give the right of interference or disturbance and other jurists do not have any permission for such affairs.⁶¹

Āyatullāh Shaykh Jawād Tabrizī, one of the contemporary religious authorities says that if a competent government is established under the leadership of a discerning and just leader or his authorized representative, it is not permitted for others to weaken him since his weakness would be detrimental to Muslims. Every one should help and follow him, and should enlist in the army if he were to issue such orders. He cites the following reason in this regard:

“Because weakening of the decree *jurist* is weakening of the Islamic *ummah* and would lead to disorder in government and civil security.”⁶²

Sayyid Muḥammad Āl-e Baḥr al-‘Ulūm states the following two viewpoints in this regard:

1. The obvious reasons for *Wilāyat-e faqih* is the necessity of people’s need for the just *jurist*. Therefore, the *fuqahā’* have a degree of *wilāyat* and any one of them can try to exert the basic necessities of *wilāyat* but with the people’s turning to one just jurist, the attempts of others will remain ineffective.

2- By virtue of the reasons stating general representation on behalf of the 12th Imam, if a just *mujtahid* takes over the charge, it

is not lawful for other *fuqahā'* to make disturbances, because with a view to the meaning of representation, opposing the just *jurist* who has established a government is regarded as opposing the 12th Imam.

The author of this article himself believes in involvement of every jurist in the formation of Islamic government. The various attempts of jurists in preparing grounds of the political system are allowed, if there are in the same unified direction and for strengthening the main objective and general interests of Muslims. If such attempts take the form of conflict, disturbance or insult to the leading just jurist, they are considered unlawful without the least doubt.⁶³

Thus, according to both the views, disturbance of the decree just jurist by other *fuqahā'* is not permitted.

Conclusions

We arrive at the following conclusions after what we discussed in this article:

1- *fatwā* is different from *ḥukm* and so is the difference between the *muftī* and the *ḥākim*.

2- The domain of the *faqih's* verdict is limited to himself and his followers, but the ruler's decree is not only to be followed by other *faqih's* and *muftīs* but is also obligatory for them eventhough their own verdicts could be different from the decree of the Islamic ruler.

3- It is possible that jurists and religious authorities could be many but the leader or the ruler cannot be more than one as this will cause anarchy.

4- Domain and extent of the decree and verdict: the ruler's decree could be either like appropriation of properties such as the destruction of houses for expansion of roads, or like orders to people to march to warfronts, or giving precedence to the most important over the important affairs, such as ordering destruction

or closure of some mosques or prohibiting some devotional affairs, etc.

5- Decree in all aspects has precedence over verdict. The *mufti* and religious authority should not oppose the ruler. In practical matters, other religious authorities cannot take steps against the measures of the ruler.

Notes:

1. 'Shahid-e Awwal, *Al-Qawā'id wa al-Fawā'id*, Vol. 1, p. 320.
2. Shaykh Muḥammad Ḥasan Najafi, *Jawāhir al-Kalām* Vol. 40, p. 100.
3. *Ibid.*, Vol. 21/403
4. Muḥaqqiq Karakī, *Hāshiyah al-Sharā'i*, p. 267, manuscript No. 1418, Fayḍiyyah School Library
5. Muqaddas Ardebili, *Majma' al-Fā'idah wa al-Burhān*, edited by: Mujtabā Irāqi, 'Alī Panāh Eshtehārdi, Ḥusayn Yazdi Iṣfahāni Vol. 7, p. 549, Islamic Publication Institute affiliated to the Society of Teachers of the Qum Theological School.
6. *Al-Qawā'id wa al-Fawā'id*, Vol. 1, p. 320.
7. *Ibid.*, p. 321-322.
8. *Jawāhir al-Kalām*, Vol. 40, p. 100.
9. *A Discussion on Religious Authority and 'Ulamā'*, An article on *wilāyat* and leadership by 'Allāmah Ṭabāṭabā'i, Publication Co. Ltd, p. 83. Imam Khumayni, *Al-Rasā'il*, p. 49.
10. Kulayni, *Uṣūl al-Kāfi*, edited by 'Alī Akbar Ghaffāri, Dār al-Ta'āruf, Beirut, Vol. 1, p. 58, H-19.
11. *A Discussion on Religious Authority and Ulamā'*, An article on *wilāyat* and leadership, p. 83. Āyatullāh Nā'ini, *Tanbih al-Ummah wa Tanzih al-Millah*, p. 98-102 "Publication Co. Ltd.
12. *Ṣaḥīfah-ye Nūr*, Collection of speeches and messages of Imam Khumayni, Vol. 15, p. 188, Ministry of Islamic Guidance.
13. *Uṣūl al-Kāfi*, Vol. 1, p. 265-268.
14. *Ibid.*

15. Narāqī, *'Awā'id al-Ayyām*, p. 189.
16. *Ibid.*, p. 192.
17. Muḥaqqiq Karakī, *Al-Rasā'il*, Vol. 1, p. 142.
18. *Ibid.*
19. *Ibid.*, Vol. 1, p. 270.
20. *'Awā'id al-Ayyām*, p. 187-188.
21. Shaykh Mufid, *Al-Muqni'ah*, p. 809-810, *Mu'assasah Nashr-e Islāmī*, Qum.
22. Shaykh Ṭūsī, *Al-Nihāyah*, p. 300-302 Dār al-Kitāb, Beirut.
23. *Silsilah al-Yanābī' al-Fiqhiyyah*, Vol. 7/106, *Kitāb al-Jihād*.
24. *Ibid.*, p. 67.
25. Sallār ibn 'Abd al-'Aziz al-Deylamī, *Al-Marāsim*, Printed in *Al-Jawāmi' al-Fiqhiyyah*, p. 661, Āyatullāh Mar'ashī Najafī Publications.
26. Shahid-e Awwal, *Al-Durūs*, p. 165, old ed.
27. Shahid-e Thānī, *Masālik al-Afhām*, Vol. 1, p. 48,54, Dār al-Hudā, Qum. Shahid-e Thānī, *Al-Rawḍah al-Bahiyyah fī Sharḥ al-Lum'ah al-Dimashqiyyah*, Vol. 1, p. 265.
28. Shaykh Ja'far Kāshif al-Ghiṭā', *Kashf Al-Ghiṭā'*, p. 394-420, Mahdawī Publication, Iṣfahān, *Khātimah Risālah Ḥaqq al-Mubīn*, Kāshif al-Ghiṭā', p. 145, onwards. After presenting this discussion that the jurists are successors of Prophets and representatives of the Imams. He regards *Khums*, uncultivated lands, as exclusive for the Imams, a point which is not without controversy.
29. Mir Fattāḥ Ḥusaynī Marāgheh'i, *'Anāwin*, p. 352-353. He has mentioned none than fifty cases of the authority of the *waliyy-e faqīh* in *fiqh*. The subject matters of this book are very similar to *'Awā'id al-Ayyām* of Narāqī which shows that they both have learnt these subject from same teacher. Undoubtedly the Kāshif al-Ghiṭā' researches have been transferred to these two honorable jurists that have brought about this similarity.
30. Muḥammad Jawād Ḥusaynī 'Āmīlī, *Miftāḥ al-Karāmah*, Vol. 10, p. 12, *Āl al-Bayt* Institute, Qum.

31. Muqaddas Ardebili, *Majma' al-Fā'idah wa al-Burhān, Kitāb al-Zakāt and Kitāb al-Khums*, Vol. 4, p. 358 Vol. 540,550.
32. Sayyid Muḥammad Āl Baḥr al-'Ulūm: *Bulghah al-faqih*, Vol. 3, p. 233-234, *Maktabah Al-Ṣādiqiyyah*, Tehran.
33. Imam Khumaynī, *Wilāyat-e faqih*, p. 150, Āzādī Publication.
34. *Ibid.*
35. *Jawāhir al-Kalām*, Vol. 21, p. 395-397, Vol. 22, p. 156-159, Vol. 40, p. 19, Vol. 16, p. 178, Vol. 15, p. 421-422, 540.
36. Ḥājj Āqā Riḍā Hamedānī, *Miṣbāḥ al-faqih, Kitāb al-Khums*, p. 160-161.
37. *Al-Badr al-Zāhir fī Ṣalāh al-Jumu'ah wa al-Musāfir*, Āyatullāh Borujerdi, *Muqarrir: Āyatullāh Muntaziri*, p. 52, Islamic Propagation Office Publication Centre.
38. Shaykh Murtaḍā Ḥā'iri, *Ṣalāh al-Jumu'ah*, p. 154-155 Islamic Publications, Qum. Explaining the *Tawqī'* in the favor of Ishāq ibn Ya'qūb, he says: If the question matter of this *Tawqī'* is the particular events we can deduce from causes explained by the Imam that the domain of *wilāyat-e faqih* is quite vast. And this sentence of the 12th Imam: 'Refer in this (matter) to the narrators of our sayings because they are my representatives for you' indicates that all the powers of Infallible Imam are conferred upon them during his absence. Therefore, on the basis of the argument of the 'Friday prayer', he believes that since this prayer is among the duties of the Imams, the principle of *wilāyat-e faqih* means that the jurists have the permission of the Imams in conducting the Friday Prayer.
39. Āyatullāh Milānī, *Muḥāḍarāt fī al-Fiqh al-Imāmiyyah*, Vol.4, p. 177.
40. Imam Khumaynī, *Kitāb al-Bay'*, Vol. 2, p. 488-499.
41. *Jawāhir al Kalām*, Vol. 21, p. 396.
42. *Kitāb al-Bay'*, Vol. 2, p. 488.
43. Imam Khumaynī, *Wilāyat-e faqih*, p. 55.
44. *Kitāb al-Bay'*, Vol. 1, p. 498.

45. *Wilāyat-e Faqīh*, p. 66.
46. There are plenty of narrations and opinions expressed in the narrative and judicial books of the Sunnis who regard the obedience to even a tyrannical ruler as obligatory and the violation of his orders as sin. Some of them believe that even if one rebels against the rightful Imam, seizes his government and rules the people by force of arms, it is forbidden to rise against him or fight him, because ‘Abd al Malik ibn Marwān revolted against ‘Abdullāh ibn Zubayr, defeated and took over the government from him and secured the people’s allegiance and became their leader and ruler. Revolution against him was forbidden. *Al-Mughnī*, Ibn Qudāmah, Vol. 10, p. 53, 371. *Ṣaḥīḥ Muslim*, Vol. 3, p. 1476, *Kitāb al-Imāmah*, chapters 12, 13, 16, 17. Abi Yūsuf, *Al-Khirāj*, p. 10, *Sunan Abi Dāwūd*, Vol. 2, p. 17, Abū Ya‘lā, *Kitāb al-Jihād*, *Al-Aḥkām al-Sulṭāniyyah*, p. 10. Some Sunni scholars do not agree with these views.
47. *Nahj al-Balāghah*, Fayḍ al-Islam, Sermon 171.
48. ‘Allāmah Majlisi, *Biḥār al-Anwār*, Vol. 90, p. 44, *Al-Wafā Institute*.
49. *Uṣūl al-Kāfi*, Vol. 1, p. 202; *Biḥār al-Anwār*, Vol. 25, p. 116; Muḥammadi Rey Shahri, *Mizān al-Ḥikmah*, Vol. 1, p. 172, published by the Islamic Propagation Organization.
50. *Ṣaḥīfah-ye Nūr*, Vol. 21, p. 47.
51. Constitution of the Islamic Republic of Iran, Act-5.
52. *Kitāb al-Bay‘*, Vol. 2, p. 465-466.
53. *Al-Qawā‘id wa al-Fawā‘id*, Vol. 1, p. 231.
54. *Biḥār al-Anwār*, Vol. 6, p. 61.
55. Ibrāhim Teymūri, *Forbidding the Use of Tobacco*, p. 117, Pocketbooks Co. Ltd.
56. Karbalā’i: Rezhi treaty, 84-87, 89, 109, 123
57. *Wilāyat-e faqīh*, p. 150.
58. The jurists deem violation of judicial laws possible in two necessities:

1- The law is definitely against the reality, For example it is against the common accord of investigators or against the sequence of events.

2- The ruler is faulty in his *ijtihad*, and did not fully discharge his responsibilities. Otherwise the jurists do not have a right to violate the decree even it is against their views or if they deem it wrong on the basis of one definite theoretical reason such as inferable common accord. *Tatimmah al-'Urwah al-Wuthqā*, p. 26, Problem No. 32.

59. *Jawāhir al-Kalām*, Vol. 22, p. 487.

60. Shahid Āyatullāh Sayyid Muḥammad Bāqir al-Ṣadr, *Al-Fatāwā Wāḍiḥah*, p. 116, Problem No. 23, Dār Al-Ta'āruḥ, Beirut.

61. *Kitāb al-Bay'*, Vol. 2, p. 514.

62. Āyatullāh Shaykh Jawād Tabrizi, *Irshād al-Ṭālib*, Vol. 3, p. 38-39, Mehr Publications, Qum.

63. *Bulghah al-faqih*, Vol. 3, p. 296-297.

The Codification of International Humanitarian Laws and the Concept of Humanitarian Laws in Islam

by Dr. Sayyid Muṣṭafā Muḥaqqiq Dāmād
translated by Qudrat Farahbakhsh and Muḥammad Legenhausen

I

INTRODUCTION

1. Definitions

In the contemporary international law literature, the two terms “human rights” and “humanitarian laws” have two distinct meanings. It should be noted that from the beginning of the use of the above mentioned term—*humanitarian laws*—there has been much discussion concerning the appropriate term and the precise distinction between its meaning and that of *human rights*. In 1969, when the General Assembly of the United Nations requested the Secretary General to prepare a report regarding “binding human rights in armed hostile activities,” many scholars harbored doubts about whether the term had been used properly, and debate and criticism followed.

In these days, however, from the viewpoint of scholars, there is no ambiguity in the sense expected to be understood from each of the two terms. *Humanitarian laws* pertain to a set of laws and provisions that aim at securing rights for human beings in time of war and armed hostilities, while *human rights* is a set of provisions which authorize the rights of human beings during peace time.

In other words, while *human rights* pertain to all human beings in all times and places, *humanitarian laws* have two basic elements:

(1) regulations pertaining to the protection of special groups of persons, such as the wounded, the sick, captives, civilians and non-military personnel;

(2) regulations pertaining to those who engage in combat.

From the viewpoint of philosophical analysis, one may say that *human rights* are related to humanistic laws, laws based on a philosophical humanism, while *humanitarian laws* arise from humanitarian sentiments and good will toward all. Humanistic laws see man as entitled to rights by reason of his humanity, regardless of race or geographical place of birth, in other words they are related to considering humanity as fundamental.

Certain pious people may disagree with the idea that a proper subject of study may be indicated by the title, "International Humanitarian Laws in Islam," on the grounds that it is not appropriate to separate a part of international Islamic law and call it *humanitarian*. All the laws of Islam are humanitarian, so it may seem a mistake to refer to a specific subset of them as such. At the outset, I also had this attitude, but I found that such a feeling is invalid and superficial. In fact, I am going to explain and review how a properly general term can come to have a more specific meaning in contemporary language. While it is true that the spirit of Islam is peace, it is obvious that *peace* does not refer to a unique condition of any human community, for it is an undeniable reality that conflict and murder take place wherever men live side by side.

The fact is that the “lenient religion of Islam” brought about the development of man to a very large extent, from the depths of the darkness of the Greco-Roman opinions about war to the clear horizon in which a certain law has been stipulated for one’s enemies and particular protections have been provided for combatants. With regard to the customary savagery of the Romans and Greeks in war, the development of international humanitarian laws is a welcome attempt to reduce the terror of war and prevent some of the calamities which, unfortunately, are still witnessed.

Islamic law has established criteria for Islamic government in order to regulate international relations and manners of behavior with other states. In the Noble Qur’an there are several verses in this regard, such as the following:

Those who, should we establish them in the land, will keep up prayer and pay the zakat and enjoin good and forbid evil; and Allah’s is the end of all affairs. (22:42)

2. The Aim of War in Islam

According to circumstances, war, in Islam, involves one of the following two aims:

(a) the protection of the territory of the Muslims against aggression,

(b) the protection of Islamic unity and religious order and the prevention of the appearance of conflicts. For this reason, the purpose of war in Islam is the establishment of virtue, justice and respect for the generosity of man. The Noble Qur’an expresses the aim of war as follows:

And fight them until there is no persecution and the religion is only for Allah (2:193).

3. The Role of Islamic Teachings in International Humanitarian Laws

International humanitarian laws should adopt two categories with regard to conflicts, namely, “humanitarian considerations” and “necessary circumstances.” Humanitarian considerations provide for good will and liberality, while necessary circumstances should be recognized as giving rise to the use of force and conflict. For this reason, it was said in ancient Rome that “*necessitas non habet legem*”, namely, necessity knows no law. Islamic jurists have also indicated a superior interpretation of the point in their dictum, “Necessities make allowable even what is prohibited.” They also have the saying, “Necessities dispense with stipulations that cannot be fulfilled”. A similar point may be found in the French legal system with the rule, “*La nécessité n’a point de loi.*” Generally speaking, the above mentioned rule should be viewed with caution, because the appeal to necessity does not excuse a criminal act unless it is a necessity known to law, such as self-defense, etc. Humanitarian laws, however, are bound to an absolute *ibāhah*, namely, general permission for what is found in common use.

When the Prophet of Islam (ﷺ) said, “I am the messenger of mercy and I am the messenger of fierce battle,” this was an indication of the role of international humanitarian rules. He has, in other words, put generosity and compassion together with war, and he has considered generosity and compassion as prior to war in order that Muslim warriors may be inspired by consideration of him as the arm of justice rather than as the sword of destruction.

Although the term used in the above mentioned *ḥadith*, *malḥamah*, means “bloody war,” “slaughter” and “fierce battle,” it also has the meaning of war against sedition and riot rather than absolute war. This Arabic term is also used for reparation, reformation and adjustment.

These remarks give a hint of the aims and purposes of war in Islam which put in order the behavior and revenue of the Muslim combatants. It is in the context of these noble senses of the terms that compassion and *malḥamah* may be joined together.

In fact, the culture of Islam has been first in the codification of international humanitarian rules. A number of these rules have been taken by the Christians to their own lands and a part of them was studied and reviewed in the Italian and Spanish universities where the authors of the new international law were educated.¹

Although the new international humanitarian laws, namely, the rules pertaining to human rights during armed hostilities, has been codified largely as a result of the humanitarian efforts of Henry Dunant² (1828-1910) in the framework of some documents, it is impossible to separate its principles from their origin and foundations. In the introduction to the annexed protocol to the General Conventions, this fact has been indicated, and it is clearly stated that the international usage rules, which harmonize with humane principles, the criteria of wisdom and common conscience, govern all that which has not been compiled in the framework of the codified provisions.³ It is here that the role of Islamic law becomes evident, for its effect on the establishment of the above mentioned usage is undeniable with its mention of the observance of conscience as a criteria which knows no limit nor boundary.

The rules of international humanitarian law are based on human nature (*fiṭrah*). Nevertheless, in Islam, this nature is under the command of Allah, and in the Qur'ān and *aḥādīth* it is considered a human duty and obligation to observe and respect it, as having been arranged by Allah.

...The nature (fiṭrat) made by Allah in which He has made man; there is no altering of Allah's creation; that is the right religion, but most people do not know. (30:30)

Anyway, with the acceptance of the fact that necessity and need is a weak point in humanity which injures the principle of “benevolence to others”, Islamic law has adopted a position about this subject which is far from that of the West. That is to say, in spite of necessity and need, every Muslim has been charged by Islamic law with love of humanity, so that it is a part of the faith of Islam.

The Noble Qur’ān says:

...And do not find in their heart a need of what they are given, and prefer (them) before themselves... (59:9).⁴

Even in cases in which a Muslim must satisfy a need, still, in accordance with the order of the Qur’ān, his rights will be limited and subject to conditions.

...But whoever is driven to necessity, not desiring nor exceeding the limit, then surely Allah is forgiving, merciful. (16:115)

Here we see that the Qur’ān emphasizes that the actions of Muslims, even in time of necessity and need, when such actions are not absolutely under his control, he remains duty bound not to act unjustly nor to stray from the path of righteousness.

II

General Concepts of International Humanitarian Laws in Islam

The general concepts of international humanitarian laws in Islam may be divided into: (a) those pertaining to armed hostilities which are not international, and (b) international armed conflicts.

After the introduction and engaging the main point, we would do well to follow the method of the Swiss lawyer Jean Pictet.⁵ To begin with, through a comparison with present

international humanitarian laws, which are influenced by the legal philosophy of positive law, we will be able to make clear the international humanitarian rules in Islam.

Armed hostilities, or in other words, wars, in the world of Islam and among the great Islamic nations, may be divided into two general categories: civil wars, or in the words of al-Māwardī,⁶ “wars of interests,” and wars against the polytheists and infidels. The first comes under the title of non-international war and the second under that of international war.

A. Non-international Armed Hostilities

In order to make clear the subject matter, it is necessary to speak more about the different kinds of wars of interests.

1. Wars against armed thieves and highway robbers

Armed thieves and highway robbers are depraved individuals who take up arms, kill people, rob their property and create disorder in the circulation of traffic and traveling. It goes without saying that, in this regard, we are talking about a war which comes under the framework of *human rights*. This means that the laws that order the rights of human beings in time of peace pertain to this area, not the international humanitarian laws which determine the rights of people in times of war. Therefore, laws pertaining to this category come under the criminal law applied by a government within its own realm. The severe punishment stipulated by the Qur’ān in this regard is due to the obvious shamefulness of the crime and the fact that it threatens the security of society.

2. War against Rebels and the Khawārij

The rebels and Khawārij are the Muslims who rose up against the imam (governor), who wished to oppose and protest against the society, and who followed heretical ideas and blameworthy

practices. In the history of Islam, we encounter the Khawārij who opposed 'Ali ibn Abi Ṭalib ('a) and rebelled when he agreed to arbitration with Mu'āwiyah. They gathered in a place called Harūrā, and for this reason the name *Harūrians* is applied to them. Their leaders were 'Abdullāh ibn al-Kawwā al-Yashkuri and Shabath al-Tamimi. A group of them interrupted a speech given by 'Ali ('a) who had mounted a hill to address the people. They cried, "Rule is for none but Allah." Imām 'Ali replied, "This is a right word by which falsehood is intended." To these words he added the following, "I do not prevent you from three things: you will not be prevented from entering the sacred precincts of Mecca, we will not initiate war against you, and while you are with us you will not be deprived of the spoils of war."⁷ In case such rebels appear and begin their revolt while they have intercourse with other loyal believers, it is the duty of the Islamic Governor (imam) to give notice that their positions are baseless and their beliefs corrupt so that they may return to the right path and rejoin the Muslim society.

The imam may also issue penalties for those who engage in open corruption, so that others may take warning, people are prevented from following them, and society is protected. Anyway, such penalties must not include execution or the application of the *ḥadd*. (The *ḥadd* is a kind of punishment specified in the *sharī'ah* for major crimes.)

The position taken here against the rebels is in fact the same sort of position taken against the parties opposed to the Prophet (ﷺ). As long as their opposition is not accompanied by violence or resort to force, they are left free to express their own opinions. If they resort to violence, however, the imām has the right to punish them. It is clear that this is irrelevant to the topic of international humanitarian laws.

In fact, revolt and rebellion against the imām, whether the rebels are under the command of a leader or not, is a kind of civil

war which requires an adequate response. The judgment of the Qur'ān in this regard is as follows:

(And if two parties of the believers quarrel, make peace between them; but if one of them acts wrongfully towards the other, fight the one that acts wrongfully until it returns to Allah's command; then if it returns, make peace between them with justice and act equitably. Surely Allah love those who act equitably.) (49:9)

In this verse allusion is made to revolt and rebellion, which means any aggression involving the initiation of armed hostilities or the non-acceptance of peace. War against the rebels and Khawārij is similar to the sort of war anticipated in the third principle of the Geneva Conventions:

With regard to armed warfare which is not international in character, and takes place within the territory and borders of the domain of one of the parties to the Geneva Convention, at least every one of the litigant parties are bound to execute the following provisions:

1. Humane treatment without prejudice regarding race, gender, religion, poverty, and the like, is to be accorded to all persons who do not actively participate in war, including individuals of the armed forces who have surrendered, also those who do not engage actively in war because of illness, wounds, imprisonment, or any other reason.

In order to achieve these aims, it is declared that the commission of the following acts at any time or place is strictly forbidden:

- a. Execution or corporeal punishment, that is, murder of any kind, lynching, violent behavior and torture.
- b. Taking hostages.

c. Insulting, humiliating and contemptuous behavior.

d. The issuing of a death sentence and its execution without any previous trial by a competent court during which judicial criteria accepted by civilized nations are observed.

2. Wounded individuals should be gathered and treated.⁸

Nevertheless, with all the prohibitions of the above mentioned protocols, it may not be far off the mark if we say that basically it is as if they did not exist. The prohibitions mentioned in the protocol pertain exclusively to those who do not participate actively in conflict, which includes the sick, the wounded and prisoners. With respect to these individuals an appendix was added stating that these prohibitions do not apply to those not mentioned. There was no specific permission declared with regard to the method of carrying out war, or the prevention of sedition or the creation of refugees. The protocols also have appendixes dealing with civilians and children. These provisions, in reality, are merely the portions of the corresponding declarations pertaining to international war, which will be reviewed later.

It is especially noteworthy here to compare these provisions with the orders of 'Alī ibn Abī Ṭālib ('a), issued to soldiers and commanders of the army with respect to the war against Mu'āwiyah:

To the army prior to the encounter with the enemy at Ṣiffin:

...If, by the will of Allah, the enemy is defeated, then do not kill those who flee, do not finish off the wounded, do not behead captives, do not denude nor expose the private parts of anyone, do not lynch the dead, do not enter any quarters or house without permission of its proprietor, do

not pillage their property except for the property which you obtain from their army, such as arms, animals, female and male slaves, and the rest belongs to them, and according to Islamic law should be divided among them. Do not inflict pain on women, even though they may attack your honor with filthy words.⁹

The provisions of the 1949 Geneva Conventions concerning non-international hostilities are not comprehensive, and in comparison to what has been mentioned regarding international hostilities, it is very incomplete. The philosophy of dividing the provisions and criteria of humanitarian laws in the framework of the first and second protocols regarding non-international and international hostilities, in fact, has been largely due to the lack of observance of many of these provision regarding the combatants of non-international hostilities. But in the Islamic system, a completely contrary position has been taken. In Islam, a merciful and sensitive view of revold and those who rebel is recommended. Therefore, the revold and the Khawārij have enjoyed appropriate provisions and standards, while the infidels and the polytheists who have undertaken international hostilities have been deprived of such provisions and standards.

3. War against Apostates

War against apostates, in fact, is war against those who had previously accepted Islam, but afterward turned their backs on Islam. Concerning these individuals, the Apostle of Allah said, "Whoever changes his religion is to be killed."¹⁰ He also said, "The blood of no Muslim may be shed, except in three cases: infidelity after faith, adultery with a woman of good reputation, or the murder of a person not by way of retaliation."¹¹ The relation between this kind of war and international laws is really determined by human rights, that is, the set of standards which order the rights of people during peace, not international

humanitarian laws which relate to periods of armed conflict between one state and another.

However, if the apostates enter a non-Islamic territory in which it is not possible to reach them, and they set up a government and want to take over a section of Islamic territory, in that case it is necessary to make war against them because of their apostasy. War against them should follow notification and warning, just as is the case for foreign enemies. Nevertheless, there are four differences between war against such apostates and war against other foreign enemies.

1. By no means are peace negotiations to be conducted with them, and no peace agreement is to be concluded in their territory, while peace agreements with foreign enemies may be concluded.

2. By no means is there to be any peace making or reconciliation with the apostates for financial considerations, while there is no obstacle to this in the case of foreign enemies.

3. The properties of the apostates are not counted as spoils of war, while to the victor belong the spoils of foreign enemies.

B. International Armed Hostilities (War against the Polytheists)

Now we may turn to armed hostilities that have the feature of being international. First we review the international humanitarian rules and laws relevant to this sort of hostility, and then their important principles will be extracted and analyzed. Although this may be attacked as over generalization, it must be admitted that in the texts of positive law, all of these principles have arisen from important general and inclusive concepts which are mentioned in the introduction of the declaration of St. Petersburg of 1868, where it is stated that the only legitimate goal of war is to weaken the power and strength of the armies of one's enemies.¹² As a result, whatever is realized within the limits of this goal will not be contrary to international humanitarian law, while everything else

and that which differs from this goal according to the opinion of the international community or according to what is understood by treaty signatories will be considered a transgression, even though the second protocol states that respect must be given to “humane principles and the common standard of conscience.”

In this regard the Noble Qur’ān states: (*And fight in the way of Allah with those who fight with you, and do not exceed the limits. Surely Allah does not love those who exceed the limits.*) (2:190) In this way, the Qur’ān prohibits transgressions of the limits of legitimate goals in war, infringement of which is considered sin and as not pleasing to God. The mentioned verse of the Qur’ān explicitly declares the goal of war to be defense against the transgressions of the enemy.

It has been reported that the Apostle of Allah (ﷺ) said that if a powerful state goes to war against a weak state, and God helps the second state until it wins victory over its enemy, but the victorious state then becomes oppressive and treats the conquered with contempt, and uses its victory for its own profit, for this reason “the wrath of God will descend upon the victor until the Day of Resurrection.”¹³ This is a matter which is basic, universal and fundamental for many laws which determine the manner of behavior and liberty of states during war within set limits. We shall review these laws under the following headings: (1) the use of arms; (2) behavior toward the enemy in such situations; (3) behavior toward prisoners of war.

1. The Use of Arms

Humanitarian thought always attempts to reduce the brutality and savagery of war, and in order to mitigate cruelty in combat it has limited the right to take up arms and has prohibited the use of weapons that cause unnecessary pain and suffering. Nevertheless, comprehensive laws in this area have not yet been implemented,

and general rules for the achievement of these goals which have been implemented are inadequate and flawed.

Among the newest laws in this area is the thirty-fifth article of the General Protocol, Annex 1 (1977).¹⁴ This article contains two rules which are relevant to this discussion. The first rule indicates that "in any armed conflict, the rights of the parties to the conflict to resort to kinds and methods of war are not unlimited." Obviously, the wording of this is very important. The reader will readily discern that the style of wording is more appropriate to advice or counsel than to the establishment of a binding legal obligation which signatories are bound to observe.

The second rule states that "the use of weapons such as missiles, chemical warfare and methods which cause uncompensatable wounds and unnecessary pain and suffering are forbidden." It goes without saying that this rule, according to the wishes of the states which ratified it, is unstable, for weapons of mass destruction are not strictly and explicitly prohibited, rather, the wording is such as to completely open the way for any state that so wishes to use cruel methods and violence. It might even be said that the St. Petersburg Declaration of 1868 places greater limitations on states, for it requires that damage and injury not trespass legitimate limits to completely destroy the armed forces of one's enemies.¹⁵ Here one may ask why such limits as were explicit in the St. Petersburg Declaration came to be forgotten in the codification of the contents of the provisions of the protocols.

Perhaps we will be accused of ignoring some international conventions, such as the 1925 Geneva Protocol¹⁶ which forbids the use of some weapons of mass destruction, such as poisonous suffocating gases and chemicals. However, on close examination of such conventions it becomes evident that the above mentioned conventions were implemented only after such weapons had been used repeatedly, or more powerful and deadly weapons had been constructed. Do we not witness the same sort of Byzantine

discussions and formal posturing today with regard to nuclear weapons? It should come as no surprise that Article Thirty-Six of the first protocol has left the choice of whether to employ new weapons to the discretion of the signatory states. It is obvious that it is most improbable that any agreement among states will be achieved in this area.

In all probability this problem did not loom large in the minds of the jurists of the early period of Islam, for they did not know of this category of weapons. The weapons that were employed during that era did not have properties by virtue of which they could be called weapons of mass destruction, or the weapons of those days did not cause an unacceptable amount of damage that could not be compensated after the enemy had been repulsed. In the Essay of Khalil al-Māliki, written on the subject of *jihād*, it is mentioned that all Muslim combatants are forbidden from using any weapon which causes more injury and harm than is useful for them in the conduct of war.¹⁷ In this regard he also mentions an example that indicates the military thinking of his age, that it is forbidden to use poisoned spears because the use of this weapon causes its victim unjustifiable suffering and injury. As may be observed, the relevant rule here is explicitly recognized, which requires that any kind of cruelty is to be considered blameworthy and condemned. The relevant rule even distinguishes the kind of weapon whose use is forbidden.

The theory of this jurist about general Islamic rules is that they prohibit an excess of fatalities, even if it is justified.

On this topic, the Qur'ān repeats: (*...and whoever is slain unjustly, We have indeed given to his heir authority, so let him not exceed the just limits in slaying...*) (17:33). In this regard, the following incident has been narrated from the Prophet (ﷺ) by Abū Hurayrah. "When the Prophet (ﷺ) sent Abū Hurayrah at the head of a group for war, he addressed the group saying: 'If you arrive and see so-and-so and so-and-so, burn them.' But when he (Abū

Hurayrah) was setting off, once again the Apostle of Allah (ﷺ) spoke, 'I gave you an order to burn those two individuals, but it is only the divine essence Who is permitted to punish by fire. So, in case you find them, you may only kill them and no others.'¹⁸ This narration clearly prohibits the unnecessary harm and injury of the enemy.

Another *ḥadīth* from the Prophet (ﷺ) about this states, "Mercy and compassion are the work of the saints (*awliyā'*). If you kill, kill justly."¹⁹ This precise practical order is clear about this matter. When 'Umar, the second caliph, removed Khālid from his position, the reason he gave was that he had killed enemies when there was no need to do so. He said, "Truly the sword of Khālid is cruel."²⁰ In a *ḥadīth* from the Prophet (ﷺ) narrated by Ibn Ḥātim, the Prophet (ﷺ) says: "If one of you engages in war with his brother, you must avoid doing injury to his face, because God created the face of Adam in His own likeness."²¹ Thus, wounds to the face have been prohibited, or, at least, are not recommended unless necessary. In the same way, the use of unnecessary weapons outside humanitarian principles are also prohibited. In the protection of enemies from unnecessary suffering and injury, Islam advances standards that are absent from the humanitarian laws of Western civilization.

Perhaps some will find fault with our statements and propound the fabricated story according to which 'Alī ibn Abī Ṭālib ('a) burnt a group of those who were allied with him, who were followers of Ibn Sūdā, 'Abdullāh ibn Sabā, who had previously been Jewish, because they said that God had become incarnate in 'Alī, with the intention of misleading the Muslims. However, there is no trace of this story in any of the historical records, while the burning of a group of people during the beginning years of Islam by one of the persons nearest to the Prophet (ﷺ), by one who is known as being most pious and most faithful, is not an incident that would be likely to be ignored by

historians. At least one of them could have been expected to have condemned such an action, while in fact, none have mentioned any reflections on it whatsoever.

Murtaḍā al-‘Askari, a contemporary researcher, authored a book in A.H. 1373 titled, *‘Abdullāh ibn Sabā and Other Myths*. In the view of this writer, most of the stories related about ‘Abdullāh ibn Sabā are fabrications. Among these fabrications is the story that ‘Ali ibn Abi Ṭālib (‘a) burnt his followers. Al-‘Askari criticizes the narrations relating to this story and has proven that the story is baseless.

Although it may well be that ‘Ali ibn Abi Ṭālib (‘a) executed some apostates, the claim that he burned them does not correspond to reality at all, for disregarding matters of religion and denomination, this action does not conform to the circumstances of the times and period, particularly since a person named Fājah Salami was burned during the time of Abū Bakr, and that the Muslims rose up against him because of it. When Abū Bakr saw the wrath of the people, he officially expressed regret for the action. It is completely incredible to think that after this such an action would be repeated by ‘Ali (‘a).

The author also reviews the persons mentioned in the chain of transmission of the *ḥadīth* and finds that they are people who are famous for fabricating stories. At the end of his analysis, he draws the conclusion that the subject of the burning of many people is one to be absent from historical texts, while most of the reliable Muslim historians have not mentioned anything about this affair at all, including the following historians:

1. Ibn Khayyāṭ (d. A.H. 204)
2. Yaqūbi (d. A.H. 284)
3. Ṭabari (d. A.H. 310)
4. Mas‘ūdi (d. A.H. 339)
5. Ibn Athīr (d. A.H. 630)

6. Ibn Kathir (d. A.H. 774)
7. Ibn Khaldūn (d. A.H. 808)²²

Given the facts mentioned, it may be claimed that without a doubt the attraction of the kind character and emotions and humanitarianism of ‘Alī (‘a) and the intense inclination toward him among the people led his enemies to fabricate this sort of story about him in order to paint him as a violent radical. Of course, the evident and concealed attempts of Jewish hands to paint Islam as violent in general is a matter which is certain and definite, although this article is not the place to discuss it, and it will be presented in an appropriate place. In any case, it is not far fetched to think that this is but one of the hundreds of instances of such treachery.

THE DISTINCTION BETWEEN COMBATANTS AND NONCOMBATANTS

Islamic teachings regarding the taking up of arms prohibit the use of arms which cause harm to both combatants and noncombatants alike and those that may destroy nonmilitary as well as military installations. Thus, every combatant has two obligations: first, he must distinguish combatants from noncombatants and restrict his aim to the former, and second, he must distinguish military from nonmilitary positions and target only the former. This has been confirmed by the Prophet (ﷺ). At the end of one of his military expeditions he observed that people had gathered and asked the cause. They responded that a woman had been killed. The Prophet (ﷺ) replied that she definitely could not have taken part in the battle.²³

In another incident, some of the Muslims in a state of disconsolation at the hands of their enemies, killed a number of children. The Prophet (ﷺ) became enraged at this and said, “Why have some today become so tyrannical that they have killed children?”²⁴

Such remarks by the Prophet (ﷺ) demonstrate that it is necessary to distinguish combatants from noncombatants as well as the reckless use of arms in such a way that they may harm noncombatants as well as combatants.

In Islam combatants are those who are able to fight, regardless of whether they actually take part in the fighting. Islam has obliged every Muslim combatant to take the utmost degree of caution so that noncombatant Muslims among the enemy will not be injured, and so the Muslim combatant will not be guilty of the sin of having injured a Muslim non-combatant. If the Muslim warriors wear special uniforms or carry a pennant, this can assist the enemy in distinguishing combatants from noncombatants. It has been reported that the Prophet (ﷺ) wore a special cloak during military operations.²⁵ Of course, we have no clue as to whether during the age of the Prophet Muslim combatants wore uniforms, although it has been said that during the battle of Badr, the Muslim forces identified themselves by tying a piece of wool to their persons.²⁶ It is probably this that persuaded Ṭabari to say that wool was used for the first time as an ensignia in the battle of Badr.

Regarding the obligation of the Muslim combatants to distinguish military targets from urban centers, al-Shāfi‘i states that the catapult could be used against an enemy castle or fort, but not against houses or inhabitable regions.²⁷ The view expressed by al-Shāfi‘i indicates that inhabited areas should not be targeted for military attack, “unless that area is very close to a military fort of the enemy.”²⁸ Really, this is a way of restricting attacks to military zones. It must not be forgotten that in Islam, destruction is not permitted for the purpose of making a threat, particularly given that the attacked area will probably be handed over to the Muslims after their victory. The juristprudents believe in distinguishing between those properties obtained by the Muslims through military victory and those won by peace treaty. In reality, an unjustifiable attack even on a military target is a kind of transgression and aggression

which is prohibited by the Creator. That kind of action is really disregard of the divine command, (*...I have been commanded to do justice between you...*) (42:15). God made clear His interest in justice with the statement, (*Surely Allah loves those who judge equitably.*) (5:42)

2. Behavior toward Enemies during War

This matter includes both how to behave toward the enemy during war and how to behave with those in enemy territories. We begin our discussion with combatants. The first international humanitarian law stipulates that every combatant must refrain from killing the wounded and must refrain from torturing the enemy or treating them with contempt, whether during combat or after enemy soldiers have surrendered. Prisoners of war must not be killed. This fundamental principle of international humanitarian law has been enacted in Notice C to Article 23 of the 18 October 1907 Hague Convention, regarding the limitations of laws and engagement in combat on land, and has been confirmed by Article 38 of Protocol I and Article 7 of Protocol II of the Geneva Conventions.

In the Islamic humanitarian rules the above principle has been particularly taken into consideration in the framework of verses and narrations. God orders the Muslims to be just toward their enemies: (*So long as they are faithful to you, you be faithful to them as well. Surely Allah loves those who guard against evil.*) (9:7) God encourages reconciliation as well, (*If they incline toward peace, make peace with them as well, and trust and rely on Allah.*) (8:61). God also forbids killing enemies who have put down their arms and stopped fighting, and says, (*...therefore if they withdraw from you and do not fight you and offer you peace, then Allah has not given you a way against them.*) (4:90). It has been narrated by Hishām ibn Ḥakīm, “I myself heard the Prophet (ﷺ)

say: 'The Lord will torture those who torture people on the earth.'"²⁹ The Prophet (ﷺ) also said:

Attract the people's love, behave well with them, invite them to Islam before you attack them. I prefer you to bring me an emigrant or a citizen who has believed in Islam, not that you bring me women after having killed their men.³⁰

Thus, war in Islam is mixed with sensitivity, for in Islam the attraction of love has been preferred to killing, and in any case, Islam does not allow killing without necessity and compulsion.

The second principle, which is of equal importance and is related to the previous one, is the prohibition of combatants from the use of treachery with the intention of killing, wounding or capturing the enemy. This rule has been mentioned in Article 23, note b, and Article 24 of the 1907 Hague Convention, and it has also been explained in detail in Article 37 of Protocol I. In this regard, the International Humanitarian Laws believe in a distinction between deceit and treachery. Deceit has been permitted but treachery has been prohibited, and is referred to as "breach of promise" in the above mentioned Protocol.

In Islam, attention has also been given to this distinction. The Prophet (ﷺ) is reported to have said that war is a kind of deceit.³¹ Hence, the enemy may be killed unawares. The Prophet (ﷺ) appointed some men to penetrate into the heart of the enemy's army in order to create worry and fear among the enemy officers and to spread strange rumors among them thereby to weaken their morale. During the battle of Khandaq, Na'im ibn Mas'ud went to the Prophet (ﷺ) and said, "O Apostle of Allah! I have turned to Islam, but my people do not know of this. I will do whatever you command." The Prophet (ﷺ) answered, "If you remain with us, you are no more than a single person, so return, and if you are able, create worry and weak morale among them, for deceit in war is very precious."³² Ibn Shaddad mentions an interesting deceit in his book, *Al-Nawadir al-Sulṭāniyyah*, reporting that some combatants

put pigs on the decks of their war ships instead of soldiers to mislead their enemies.³³ Another example that has been reported is that of Ḥajjāj ibn ‘Alāṭ al-Salamī, who accepted Islam and fought along side the Prophet (ﷺ) at Khaybar. When Khaybar was liberated, he said, “O Apostle of Allah! I have some property with my wife, Umm Shaybah, the daughter of Abū Ṭalḥah, and I also have some property with some merchants in Mecca. Please give me permission to go there.” The Prophet (ﷺ) gave him permission and Salamī said, “O Apostle of Allah! I will not be able to avoid lying there.” The Prophet (ﷺ) said, “Say whatever is appropriate.” In other words, the Prophet (ﷺ) gave implied permission for Ḥajjāj to lie in order to recover his wealth. Thus, when he arrived in Mecca, the people asked him what had happened at Khaybar. He replied that the Prophet (ﷺ) had been soundly defeated there and that his followers had been killed or captured, but that they had refrained from killing the Prophet (ﷺ) whom they would send to Mecca to be killed there in retaliation. The people of Mecca became very happy at hearing this news. Ḥajjāj waited for the right opportunity and then asked the people there to help him procure his properties to purchase the spoils of the war before the other merchants could arrive at Khaybar. So, they returned his properties unexpectedly soon.³⁴

In the view of al-Nawawī there is a consensus among the schools of jurisprudence about the employment of deceit against the polytheists any time it may be necessary to do so, unless this is prohibited by some particular treaty with them according to which they are guaranteed that there will be no deceit in battle.³⁵ In this regard the Qur’ān states, (*And fulfill the covenant of Allah when you have made a covenant, and do not break oaths after making them fast.*) (16:91) In any case, Islam does not permit resort to treachery. The Prophet (ﷺ) has said, “Anyone who commits treason against us is not of us.” When Abū Jandal ibn Suhayl fled from the midst of the polytheists, he heard that the Prophet (ﷺ)

intended to return him to the polytheists in accord with the treaty he had concluded with them. Abū Jandal rose to his feet among the Muslims and said that if he was returned to the Meccans they would torture him so much that he would be forced to deny the truth of Islam. The Prophet (ﷺ) responded, "Even at the price of protecting a Muslim from the punishments of the polytheists, treachery and breaking a covenant is not proper for us."³⁶

Likewise, it has been narrated that 'Umar ibn al-Khaṭṭāb heard that a Muslim soldier told an Iranian enemy combatant not to be afraid and then killed him. 'Umar wrote to the commander that if he heard of such an act being committed again, he would behead him.³⁷ In this regard, al- Shāfi'i says:

Whatever is permitted by consensus in Muslim territories will be allowed in the territories of the polytheists as well, and whatever is forbidden in Muslim territory is forbidden in the territory of the infidels also. Anyone who commits a forbidden (*ḥarām*) act deserves divine punishment. Hence, by this reasoning, if a forbidden action performed in the territory of the infidels occurs, this does not obliterate the sin of the perpetrator.³⁸

THE PROHIBITION OF MASS DESTRUCTION AND OF DENYING THE RIGHT TO SURRENDER

The combatants of Islam have been prohibited from mass destruction and the threat of mass destruction. They are also forbidden to deny their enemies the right to surrender. This rule is precisely mentioned in Article 40, note 1 (p. 16), of the 1977 Protocol I, and in Article 4 of the 1977 Protocol II, confirming the contents of Article 23 of the 1907 Hague Convention. Hence, the Islamic commandments in this regard have a chronological precedence over all the above mentioned rules. The Islamic commandments concerning this subject are included in the above mentioned verses of the Qur'ān, and according to these

commandments, if an enemy inclines toward peace, the Muslims are obliged to accept that. Killing the enemy after he has surrendered and given up arms has been strictly prohibited.

It is unheard of that a people or a group, totally or a number of them, have been killed or annihilated by Muslims [after they had surrendered]. The method of behavior of the Apostle of Allah (ṣ) with the Meccans, following the victory over Mecca, is the best model in this regard. The Prophet liberated all of them, and in the history of Islam, they have been commemorated as *al-ṭulaqā'*, the freed or liberated, i.e., those who remained polytheists until the victory over Mecca.

Perhaps someone will claim that a counterexample is to be found in the tribe of the Banī Qurayẓah, but a complete explanation of the circumstances of this people will dispel any rumors that have been spread about them.

We know that in the battle of *Khandaq*, the Prophet had assigned the Banī Qurayẓah to the protection of the rear flank of Islam. We also know that in this battle, the condition of the Islamic forces was so sensitive and disappointing that the Apostle of Allah offered the Banī 'Aṣḡān terms to the effect that if they fought they would be given one third of the date harvest of Madinah. However, the Jews of the Banī Qurayẓah took advantage of the opportunity to conspire with the idolaters and breached their promise and oath and attacked the Muslims. When the armed disturbance had ended, the Apostle of God called for 'Ali ('a) and appointed him to command an attack against the Banī Qurayẓah. When 'Ali ('a) approached their castles, he heard that they had slandered the Apostle of God. The next morning, the tribe of al-Aws hurried to the Prophet (ṣ) and said, "O Apostle of God! These are our people and not from the tribe of Khazraj, and yesterday you treated well our brothers from the tribe of Qaynuḡā' (whom the Apostle of God has set free)." After this discussion the Jews agreed to abide by the judgment of the commander of the Aws,

Sa'd ibn Ma'adh. In accordance with their religious precepts mentioned in their books, he gave the verdict that their men were to be killed, their wealth divided, and their women and children to be taken captive.³⁹ Obviously, this is not an incidence of mass destruction, but rather indicates an order issued in accordance with the decrees of their own book as arbitrated by terms to which they had agreed.⁴⁰ This act, which is attributed to Islam, is in fact the result of the acceptance of the laws of an extremely obstinate and vicious enemy. Who can fail to admire the Prophet (ﷺ), who, regarding the unexpected heat of that summer day, said, "Do not mix the heat of this day with the heat of the sword, and postpone their execution until the temperature declines."⁴¹ Moreover, they did not accept the judgment of the Apostle of Allah, and we know that the judgment of the Prophet about their neighbors, the tribe of the Banī al-Naḍir and the Banī Qaynuqā', resulted in the seizure of their property, while their lives remained secure.⁴²

Here it is worth mentioning a story narrated in the sources of the Sunnis from Abū Hurayrah that states an Islamic order in this regard. Abū Hurayrah reports that he heard the following allegory from the Prophet of God: "One day an ant bit a prophet, and for this reason he ordered that all the ants of that hill be burnt. Then God said to that prophet, 'Because an ant bit you, is it proper for you to give an order to kill an entire generation of ants who are occupied with the glorification of the Creator?'"⁴³

GRANTING SECURITY

There is an explicit order in the Qur'an about granting security. God, the Exalted, says: (*And if any one from the idolaters seeks protection from you, grant protection to him until he hears the word of Allah, then convey him to his place of security; this because they are a people who do not know.*) (9:6) Here the phrase "a people who do not know" means that they do not know Islam. Once, when al-Awzā'i⁴⁴ was asked about this

noble verse, "In your opinion, where is the place of security indicated in the verse? If the idolater says that his place of security is Constantinople, must he be conveyed there?" Al-Awzā'i replied, "If he reaches one of their own castles, that is the place of security for him." Again, it was asked of him, what is to be done if the idolaters are in their own territory but have not yet reached their place of security and they encounter a Muslim guard? He replied, "The guard must not bar them." Likewise, he was asked about what is to be done in the case of an enemy who has entered Islamic territory with permission and with a letter granting him security which, naturally, is valid until his return to his own territory, and on his way back he crosses the border to his own territory as he climbs a mountain, when a fierce wind blows him back into the Islamic territory. If, in such circumstances, the enemy says that his entry into Islamic territory was by the prior permission, how should this be judged? Al-Awzā'i answered, "In my opinion, because of the previous permission, he must not be bothered and is to be considered as under protection."⁴⁵

In the view of the jurists, the granting of security does not apply to groups of more than ten persons, small caravans, or the inhabitants of a castle. Therefore, if a Muslim says to an enemy, "Put your arms down and you are secure," that person has really been given security. And if the enemy, following the announcement of security, exits his base or castle, he can no longer be killed; rather, he must be led to his own desired place of security. A more comprehensive and extensive explanation of security could be given, but this must be reserved in order to pursue related matters.

A Muslim combatant is not permitted to resort to collective punishments of the enemy, especially for the sake of vengeance. This rule has been stipulated in certain articles of the first Geneva Convention (1949), in article 47 of the second Geneva Convention, article 20 of the 1977 Protocol I, as well as article 15 of the 1977

Protocol II. The purport of all of these mentioned articles prohibits taking vengeance against the wounded, the sick, the shipwrecked, and also individuals, ships or goods which have been declared protected according to the conventions.

Probably, at the time of the codification of the 1948 treaty on the commitment of crimes of mass destruction and genocide, considered the insufficiency of the endeavors regarding this matter that had been made,⁴⁶ since article 2 of the treaty defines crimes of mass destruction as follows:

1. Killing the members and individuals of a community.
2. The infliction of severe injury, physical or mental, on the members of a community.
3. The imposition of specific living conditions that result in the destruction of all or a part of the life of a community.
4. The imposition of specific provisions with the intention of preventing reproduction.
5. The forced transfer of children from one community to another.

The prohibition of collective punishments in Islam is much more extensive than this. The prohibitions mentioned above are restricted to specific classes or groups of people, while there is no prejudice or restrictions in the Islamic prohibition. The general Islamic rule about this matter is, (*No bearer of burden shall bear the burden of another*) (53:38), and also (*The Creator does not impose upon any soul a duty but to the extent of its ability; for it is (the benefit) it has earned, and (the evil) it has wrought*) (2:286) Therefore, it may be proudly and explicitly declared that the detailed provisions of the convention on the prevention of mass destruction have their source in Islamic teachings and prohibitions, and in fact, the convention explains and makes clear the Islamic rules.

THE PROHIBITION OF ACTS OF VENGEANCE

Regarding the prohibition of acts of vengeance, there are some relevant verses in the Glorious Qur'ān in which the principles of punishment are declared. (*The retaliation for any evil is the like of it*) (31:53). (*Whoever does an evil, he shall be recompensed with naught but the like of it...*) (40:40). (*And the recompense of evil is punishment like it, but whoever forgives and amends, he shall have his reward from Allah, surely He does not love the unjust*) (42:40). (*And whoever defends himself after his being oppressed, these it is against whom there is no way (to blame)*) (42:41). (*The way (to blame) is only against those who oppress men and revolt in the earth unjustly; these shall have a painful punishment.*) (42:43). (*The sacred month for the sacred month and all sacred things are (under the law of) retaliation; whoever then acts aggressively against you, inflict injury on him according to the injury he has inflicted on you and be careful (of your duty) to Allah and know that Allah is with those who guard (against evil)*) (2:194).

The plain and explicit meanings of these verses make clear the criteria of retaliation. It is inferred from these verses that if an enemy resorts to acts of vengeance, the Muslims will be allowed to take such actions as well. This inference is critical in two respects. Firstly, the actions of taking vengeance and revenge in the modern sense and in accordance with the principles of international humanitarian rights of the above mentioned conventions are the illegal acts which are forceably taken by one state against another in response to other illegal acts. The sole intention is to compel by force the acceptance of a defense to an antagonism that resulted in illegal action. Consequently, the act of vengeance is an illegal act taken in retaliation for an illegal act. It is clear that the forces of the Muslims who follow Islamic commandments may not resort to illegal actions of taking vengeance, for such actions, in fact, are

only considered by the enemy. As a result, the above mentioned assumption is outside the realm of the Islamic commandments.

Secondly, in Islam, concerning the use of the above mentioned rule of retaliation, an important limit is set. No Muslim is permitted to respond in kind to the enemy's unreasonable and indecent acts. Even during the time of the clashing and flashing of swords, that is, even when it is permitted to take the life of another, it is considered wonderful, nevertheless, as a good deed if one is *Godwary*, for wherever it is permitted, prohibitions are not to be restricted. But our discussion is of a war on the basis of piety or Godwariness (*taqwā*) in opposition to crime, sin and violation, and therefore it is self evident that it would not be logical for a war based on the defense of *taqwā* if in the battlefield it takes the same view as the enemy to trample the principles of *taqwā* by its actions. Therefore, Islamic war, on the basis of the principles of *taqwā*, must be accompanied by limitations, and even if the enemy violates the standards of *taqwā*, the Muslims will never step beyond its bounds. If the enemy mutilates the bodies of the slain Muslims, the Muslims will not do the same with the enemy dead, for the Apostle of Allah ordered, "Beware! Do no mutilate the dead!"⁴⁷ When the idolaters killed Ḥamzah ibn 'Abd al-Muṭṭalib in the battle of Uḥud, and mutilated his body terribly, the Prophet (ﷺ) was extremely disturbed by their deed,⁴⁸ for Ḥamzah was his uncle, and the Apostle of Allah loved him more than any of his other relatives. Nevertheless, in the ensuing battles it never even crossed his mind to issue permission to mutilate the bodies of the dead. Even if the enemy deprives its prisoners of war of food or water until they perish, the army and forces of *taqwā* would never treat its enemies this way, for it is the commandment of the Almighty that the prisoners of war must be treated humanely and with dignity, and the Apostle of Allah has forbidden killing anyone by thirst.⁴⁹

THE WOUNDED

According to international humanitarian laws the wounded are to be treated humanely and respectfully. This is very important for the medical organizations, and many of the principles of the Geneva convention of 1949 and the two protocols which refer to the wounded, the sick and the shipwrecked and to medical organizations have been formulated according to this conception.⁵⁰ In order to show the breadth of the attention and consideration that Islam gives to the enemy wounded and sick, it is sufficient for us to narrate the facts related to Ṣalāḡ al-Dīn Ayyūbī and Richard the Lionhearted. When the latter became sick, Ṣalāḡ al-Dīn secretly entered his tent, and although Richard was the most blood thirsty and fierce of the Crusaders, he nursed him back to health. This incident shows that the Muslims not only nurse and care for the wounded and sick who have fallen into their custody, but they have also extended this action to the very curtain of the enemy tent. Regardless of his motive, if such a deed were at odds with the teachings and recommendations of Islam, he definitely would never have performed it.

Given this fact, I think that it will be no exaggeration if I say that the performance of any illegal deed against the wounded or sick, or anyone who is protected by the conventions, is against Islam.

It is worth mentioning that there has not been much discussion of the shipwrecked in traditional Islamic theories, because in the early period of Islam the Muslims did not have much contact with naval forces. Among the traditional jurists, ships were considered as castles, and hence, those on board were treated according to the same rules that govern the inhabitants of castles. It should be emphasized here that humanitarian laws, inserted in international treaties, are entirely indicative of the details of Islamic opinion and they are in conformity with the application of its commandments.

SPECIFIC PROTECTED CLASSES: THE AGED, CHILDREN AND WOMEN

Now, we turn to the relations between combatants and individuals. In this regard there are explicit statements made by the Prophet (ﷺ). The Prophet ordered, "Go forth with reliance on the Name of God and prayers for the good of His Apostle, but never kill the aged, and likewise not the children nor the women, lest you commit treason. Gather the spoils of war and arrange affairs well, for God loves the doers of good."⁵¹

According to these words, the Islamic forces are forbidden from killing old men or those who are afflicted by untreatable chronic disease, unless they have a role in the war or in the counsels of war. In this last mentioned condition, they are really chiefs, and about them the Qur'ān commands: (*And if they break their oaths after their agreement and revile your religion, then fight the leaders of unbelief—Surely thier oaths are nothing—so that they may desist.*) (9:12) In reality, this verse has universal comprehension, and it was revealed with regard to the polytheists of the Quraysh. These were the same people about whom Abū Bakr told the soldiers that they would encounter a people who shave their heads. He counseled the soldiers to crush them who are by their swords the helpers of Satan.⁵² The above mentioned statement also indicates that Muslim combatants are prohibited from killing women and children.

Some *fuqahā*, who have similar opinions to what has been mentioned in international humanitarian laws, believe that the immunity of the old, as well as that of women and children, is on the condition that they do not take part in military operations. 'Allāmah Hilli divides old men into four groups, as follows:

1. Individuals who have both an important role in counsel opinions and the strength to fight.
2. Individuals who do not have a role in the counsels, but do have the strength to fight.

3. Individuals who have a role in the counsels, but lack the strength to fight.
4. Individuals who have neither an important role in counsel opinions nor the strength to fight.

In the opinion of Ḥilli, those who participate in the fighting or in consultation may be killed, but it is by no means permissible to kill those of the fourth group. 'Allāmah Ḥilli bases his opinion on the practice of the Prophet (ﷺ) in the battle of Khaybar. In this battle the Muslim combatants, at the command of the Apostle of Allah, killed Darid, a man more than one hundred years old, because he guided the idolaters in the strategy of the war. With regard to the prohibition against killing those of the fourth group, 'Allāmah Ḥilli also bases his opinion on the orders of the Prophet (ﷺ).

The author of *Jawāhir*, in addition to confirming the opinion of 'Allāmah Ḥilli, says that the jurists of the Imāmiyyah have a common opinion about this matter.⁵³

Mālik was asked if it is necessary for Muslims to kill the enemy women and children who stand on embankments and throw stones at the Muslims and create disorder in the Muslim ranks. In answer he only said, "The Apostle of Allah prohibited the killing of women and children." When al-Awzā'i was asked about women and children who have the ability to guide the enemy forces, he said, "Merely on the basis of suspicion and guessing they cannot be killed, but they may be killed only when they are found to be actually engaged in guiding them."⁵⁴

ARTISANS, PEASANTS, WORKERS AND MERCHANTS

According to what has been mentioned above, it is forbidden to kill artisans, hired laborers, farmers who do not take part in fighting, or those who follow an army but do not take part in the hostilities, such as merchants.⁵⁵ All of these people have security because they are at the service of the well being of society and their

efforts are on behalf of its citizens, and in an Islamic war, by no means is there any aim to annihilate or overshadow the civilization or felicity of any community.

MONKS AND CLERICS

Likewise, Islamic combatants are not permitted to kill monks, including the clerics of any way or order who live in cells or those who abandon the world, and are People of the Book. Of course, this immunity applies to monks and hermits as long as they remain in their churches or monestaries.⁵⁶

DEPRIVATION OF FOOD AND WATER

Now, we turn to the subject of the deprivation of food and water for the continuation of life with the intention that citizens will be thereby forced to leave their homes. Islam has prohibited even the killing of animals unless to appease hunger.⁵⁷ In order to prevent the waste of the economic value of animals, Islam has prohibited killing them by burning. The Apostle of Allah forbade the killing of animals obtained as spoils of war, unless for military necessity or in cases that the existance of an animal strengthens the enemy's military forces.⁵⁸ Also, if the Muslims start out for battle and do not find food, although they are willing to pay the price of it, and when people prevent the sale of food to them, only in such circumstances may they obtain food by the use of force. At those times that Islam permits the prevention of water from reaching the enemy, or the pollution of enemy water supplies by mixing with blood, poison or dirt, the aim must be to afflict the enemy combatants, not their citizens. Resort to such actions is also severely restricted, allowed only in cases of necessity and compulsion.

When the Muslim decamp and food remains, they are not allowed to burn it, unless it would strengthen the enemy forces. This means that Muslims are not allow to destroy except for military necessity. In the year A.H. 6, Thamamah, the chief of the

Yamāmah, decided to prevent the entrance of grain into Mecca, upon which the people of Mecca were dependent, with the intention that the Meccans would thus be forced to accept Islam, unless the Apostle of Allah would issue another order. As a result, when Mecca faced the danger of famine, its inhabitants requested a suspension of the embargo, and the Apostle of Allah wrote to Thamāmah to lift the embargo.⁵⁹ We know that the Meccans were at war with the Prophet (ﷺ) from the moment he emigrated. Nevertheless, the fact that the Prophet (ﷺ) gave orders to prevent the destruction and demolition of Mecca, to which we shall turn shortly, confirms all that has been said above.

NOTES

1. Taube, Baron, Michel, *Etude par development historique du droit international dans l'europe orientale* (Netherlands, 1927).
2. Henry Dunant was the founder of the International Red Cross. He had an important role in the codification of the Geneva convention on the amelioration of the situation of the wounded in the battlefields. For a collection of conventions and international treaties pertaining to international humanitarian law, see *The International Red Cross Committee Periodical* (Vol. 12, 1983).
3. The second protocol concerning the protection of the victims of non-international conflicts may be found in the introduction to U.N. document No. A/32/144, June 8, 1977.
4. This *āyah* pertains to the fraternal self-sacrifice and generosity of the Muslims immediately following the *hijrah*.
5. Jean Pictet, *The Principles of International Humanitarian Law* (Red Cross, 1966), 455, 462.
6. Al-Māwardī (d. A.H. 450) was an outstanding Shāfi'i jurist who taught in Baghdad and Basra. Cf., *Al-Aḥkām al-Suṭāniyyah*, (Qum: Markaz al-I'lām al-Islāmi), p. 56f.
7. Ibn Kathir, *Al-Badāyah wa al-Nahāyah*, Vol. 7, p. 282.
8. The Geneva Convention on the convalescence of patients and wounded of the armed forces in battle, principle 3. The other three Geneva Conventions regarding the convalescence of the wounded and patients and shipwrecked persons of naval forces, No. 3219, 12 August

1949, is named the Second Convention, as well as the 22 August 1949 Convention on the method of behavior with prisoners of war, which is named the Third Convention, No. 3317. Also see the 22 August 1949 Geneva Convention on the protection of citizens during armed conflict, No. 3317. Further justification and points of emphasis have been added in the protocols announced at the general conference of 1976 on international humanitarian rights.

9. There are many historical sources that may be consulted. Cf. Mas'ūdi, *Al-I'lām bi al-Ḥarūb al-Wāqi'ah fī Ṣadr al-Islām*, Vol. 4, 316-317; Yūsuf ibn Muḥammad ibn Ibrāhīm al-Andulusī (d. A.H. 653), manuscript in the Cairo Library, History section, No. 399; *Nahj al-Balāghah*, Letter 14, with slight differences.

10. Badr al-Dīn 'Aynī, *Sharḥ Ṣaḥīḥ al-Bukhārī*, Vol. 24, p. 79; Suyūṭī, *Jāmi' al-Ṣaḥīḥ*, No. 8559.

11. Māwardī, p. 58.

12. The St. Petersburg Declaration of 1868 was signed by representatives of fifty-eight nations, including England.

13. *Siyar al-Kabīr bā Sharḥ-e Sarakhsī*, Vol. 2, p. 85.

14. The first protocol on the protection of the victims of international hostilities, June 8, 1977, Art. 35. Hereafter, this will be referred to as *the first protocol*.

15. Cf. The Proclamation of 1868 of St. Petersburg, fn. 1, p. 16.

16. The protocol forbidding the use of suffocating gases, whether chemical or microbial, ratified on 17 June 1925.

17. *Mukhtaṣar Khalīl*, Ch. 4, narrated by Ḥamidullāh, *Muslim Conduct of State*, No. 214.

18. Tarfandī, Vol. 2, p. 298.

19. *Ṣaḥīḥ al-Muslim*, Istanbul, Vol. 6, p. 72.

20. Ibn Athīr, *Al-Kāmil fī al-Tārikh*, Vol. 2, p. 358 (mentioned by Mālik ibn Nuwayrah).

21. *Musnad Aḥmad*, Vol. 2, p. 251.

22. Murtaḍā al-'Askarī, *'Abdullāh ibn Sabā wa Asāṭir al-Ukhrā* (Beirut: *Dār al-Kitāb*), fourth edition, Vol. 2, p. 117-149. For hadiths pertaining to burning, cf., *Al-Ghadīr*, Vol. 7, p. 155f., nos. 8, 9, 10. Also see *Al-*

- Mu'jam al-Mufahras li Alfāz al-Aḥādīth al-Nabawī*, Vol. 1, p. 448-449, under *ḥarq* (burning).
23. *Āthār al-Ḥarb*, p. 472, reported by Qaṣṭalānī, Vol. 5, p. 152.
24. *Musnad Aḥmad*, Vol. 3, p. 435.
25. Bukhārī, pps. 54, 90.
26. Ṭabarī, *Tafsīr*, p. 64.
27. Ibn Sa'd, *Ṭabaqāt*, Vol. 3, p. 11.4; Sarakhsī, Vol. 3, p. 212.
28. Shāfi'i, *Al-Umm*, Vol. 4, p. 287.
29. *Musnad Aḥmad*, Vol. 3, p. 404.
30. *Kanz al-Ummāl, Bāb Jihād, ḥadīth* 1130 and 1136.
31. "War is deceit" is an old Arab proverb which has been attributed to the Prophet (ﷺ) in the context of Islamic military engagements. Ḥamidullāh, No. 460, narrated from Sarakhsī, Vol. 1, p. 83.
32. Bukhārī, 55:157; Muslim, Vol. 5, p. 143; Ibn Hishām, pps. 683-684; Ṭabarī, *Tārīkh*, Vol. 1, p. 302; Ibn Ḥajar, *Al-Iṣṣabah*, No. 3074.
33. *Al-Nawādir al-Sulṭāniyyah wa al-Maḥāsin al-Yūsufiyyah*, p. 178; Ibn Athīr, *Al-Kāmil*, Vol. 2, p. 223.
34. Ibn Athīr, *Al-Kāmil*, Vol. 2, p. 223.
35. Al-Nawawī, *Sharḥ Ṣaḥīḥ al-Muslim*, Vol. 7, p. 306.
36. Ibn Hishām, *Al-Sīrah*, edited by Muḥammad Muḥyi al-Dīn 'Abd al-Ḥamid, (Cairo), Vol. 2, p. 367.
37. Shāfi'i, *Al-Umm*, Vol. 7, p. 224 of the Būlāq edition, p. 241 of the Beirut edition.
38. *Ibid.*, Vol. 7, p. 322 of the Būlāq edition, p. 355 of the Beirut edition.
39. Ibn Hishām, *Al-Sīrah*, pps. 688-689; Abū Sayf, p. 124; Ḥamidullāh, No. 289.
40. *Deuteronomy*, 20:10-15.
41. Al-Wāqidi, *Al-Maghāzī*, p. 514 (ed. Dr. Mārsūn Ḥūns), Al-Sarakhsī, *Sharḥ al-Sīyar al-Kabīr*, Vol. 1, p. 367 (Vol. 2, p. 591, Vol. 3, p. 1029, published in Egypt).
42. It should be noted that doubts have been raised about whether this story is true at all by the esteemed scholar Dr. Sayyid Ja'far Shahīdī. Cf. *Tārīkh-e Taḥlīli-ye Islām* (Tehran: University of Tehran).
43. *Musnad Aḥmad*, Vol. 2, p. 403.

44. Al-Awzā'i (d. A.H. 157) was a Muslim jurist who spent most of his life in Damascus and Beirut.
45. For further study about protection and the granting of security, see *Wahbah al-Zuhaylī*, p. 204-294; Ḥamidullāh, Nos. 424-455; Maḥmasānī, *Al-Qānūn wa al-'Ilāqāh al-Dawliyyah*, p. 93f.; 'Allāmah Ḥillī, *Muntahā al-Maṭalib*, Vol. 2, p. 913; Ṭabrisī, *Majma' al-Bayān*, Vol. 5-6, p. 8; Qurṭubī, *Al-Jāmi' li Aḥkām al-Qur'ān*, Vol. 4, p. 76 (Beirut); Shahīd Thānī, *Al-Rawḍah al-Bahiyyah*, Vol. 2, p. 396; and also an article by this author, "Institution of Aman" in the journal *'Ulūm Insānī*, No. 2.
46. Convention pertaining to the prevention and punishment of genocide, 9 December 1978.
47. There are numerous aḥādīth on the prohibition against mutilation in *Al-Mu'jam al-Mufahras li-alfāz al-Aḥādīth al-Nabawī*, Vol. 6, pps. 169-172; also in Shāfi'i, *Ma'rifah al-Sunan wa al-Āthār*, Vol. 6, pps. 553-559.
48. Ibn Hishām, *Al-sīrah al-Nabawīyyah*, Vol. 3, pps. 95-97 (ed. Muṣṭafā al-Saqā' et. al.).
49. Zamakhsharī, Maḥmūd ibn 'Umar, *Al-Kashshāf*, (Cairo: Intishārāt Ḥalabī, 1948), Vol. 3, p. 310; *Sharḥ Siyar al-Kabīr*, Vol. 1, p. 78; *Al-Mabsūṭ*, Vol. 10, p. 5. In *Nahj al-Balāghah* it is stated, "Do not inflict pain on women even though they may attack your honor with filthy words and abuse your officers, because they are weak in character, mind and intelligence. We have been ordered to keep off from them although they were infidels. Even in the pre-Islamic period, if a man struck a woman with a stone or a stick he was rebuked along with his posterity after him." (Instruction 14).
50. See the Geneva Conventions of 1949 and the second protocol of 1977.
51. Abi Dāwūd, Vol. 2, p. 52; *Sharḥ al-Zarkānī 'alā al-Mawṭā'* Vol. 2, p. 295; Bayhaqī, Vol. 9, p. 85-89; *Nayl al-Awṭār*, Vol. 7, p. 249; Zuhaylī, *Āthār al-Ḥarb*, p. 472-473.
52. Al-Sarakhsī, *Sharḥ al-Kabīr*, Vol. 1, p. 41 (Egyptian edition); Shāfi'i, *Ma'rifah al-Sunan wa al-Āthār*, Vol. 7, p. 28.
53. Muḥammad Ḥasan Najafī, *Jawāhir al-Kalām*, Vol. 21, p. 75.

54. Al-Qaṣṭalānī, Vol. 5, p. 142; Ibn Mājah, *Al-Sunan*, Vol. 2, p. 101.

55. Maḥmaṣānī, p. 241.

56. *Ibid.*

57. *Al-Mughnī*, Vol. 8, p. 541; *Al-Muḥallā*, Vol. 7, p. 343. Wahbah al-Zuhaylī, *Al-'Ilāqāh al-Dawliyyah fī al-Islām*, p. 69.

58. *Ibid.*

59. Ibn Athīr, *Al-Nahāyah*, Vol. 1, p. 247.

LIFE AND LIBERTY^{*}

by Mahdī Muntazir Qā'im

translated by Dr. Muḥammad Legenhausen

Liberty is a principle with which each person is intimately familiar, and after life it is considered to be one of the greatest blessings granted by God. In Iran today, research pertaining to liberty is taken to have both theological and political import. In this area there are numerous topics which deserve inquiry and reflection, including the problem of the concept of liberty, the relation between liberty and justice, the relation between liberty and power, the scope of liberty, etc.. In this article, however, the topic will be restricted to a summary treatment of the topics of "life and liberty" in the sense that the right to life may be taken as a premise of the further discussion of the principle of liberty from the perspective of the sources of the jurisprudence of Islam. It is

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hoped that Allah also will grant us the opportunity to investigate further aspects of this issue.

THE RIGHT TO LIFE

Human life is a divine blessing for the preservation of which every effort must be made. In the law of Islam, the *shari'ah*, killing a person is a major sin. In this ruling, the religious person and the non-religious person are equal. Presented here is some of the evidence pertinent to this subject.

1. The Prohibition of the Murder of those who Profess a Divine Religion

God says: “And whoever intentionally kills a believer, his recompense shall be hell” (4:93). And the Prophet (ﷺ) said: “...the property and life of whoever says ‘There is no god but Allah’ are to be secure according to me...”¹ Imam Ṣādiq (‘a) said: “It is forbidden for a Muslim to kill a *dhimmī* who believes in the *jizyah* and pays it and is not engaged in a struggle against the *jizyah*.”²

2. The Prohibition of the Murder of those who do not Profess a Divine Religion

A. The General Prohibition Against Killing People

1. God says: “...whoever slays anyone except as [the sentence] for murder or corruption in the land, it is as if he had slain all mankind...” (5:32). Also, “The Prophet (ﷺ) cursed whoever did a deed in Madinah and whoever shelters the doer of the deed. [The narrator of the ḥadīth said,] I said, ‘What deed?’ He [the Prophet (ﷺ)] said, ‘Killing’.”³ There are three noteworthy points to be considered regarding these words of the Prophet (ﷺ): first, that there is nothing special about Madinah in this regard, and at the very least, the judgment of the Prophet (ﷺ) includes the entire

realm of Islamic government; second, it is not proven that these words of the Prophet (ﷺ) are to be taken as a matter of political exigency; third, the generality of the word ‘killing’ is not shaken by some such qualification as “only for the Muslims”.

2. It has been narrated, “Imam Ṣādiq (‘a) in one of his travels witnessed a man who had fallen ill. He said to his fellow traveler, ‘I guess this man must be thirsty. Quench his thirst.’ He went to his bedside and suddenly returned. The Imām said, ‘Did you quench his thirst?’ He replied, ‘No. The man is a Jew.’ Upon hearing these words Imam Ṣādiq (‘a) became upset and in fury he demanded, ‘Be that as it is, but is he not a man?’”⁴

3. The *aḥādīth* in which the prohibition against suicide is propounded⁵ also can be taken as support for the general prohibition against killing people, unless it can be proven that the intended audience of the Qur’ān and *aḥādīth* is always the Muslims and the prohibition of suicide does not apply to those without religion.

Perhaps it will be said that the following *ḥadīth* may be taken to permit the killing of those without religion: “Allah revealed to Moses, ‘I swear by My magnificence, O Moses, if the man you killed for one moment had confessed that I am the Creator and Provider, I would have made you taste the flavor of My chastisement. Indeed, I have pardoned you, but only because he never for a moment confessed that I am the Creator and Provider.’”⁶ From this *ḥadīth* it seems that no permission is granted for killing non-believers, first, because the subject of the narration is not an intentional killing, while the topic of this article is the prohibition of intentional killing; second, because, from the words “I have pardoned you,” it can be understood that even the unintentional killing of a human being without religion, to begin with, is not permitted, but is something to be forgiven by God.

B. Implications of Religious Liberty

God says, “There is no compulsion in religion” (2:256). If what is meant by “religion” is religious beliefs, the negation of compulsion regarding them would mean that their compulsion is not possible, while the prohibition of compulsion on this reading would mean that something is not to be done that cannot be done, the prohibition of a task which cannot be performed. It seems that it is not proper to prohibit something which itself is impossible, so, if by “religion” is meant the beliefs of one’s heart, the meaning of the passage would be to negate, rather than prohibit, compulsion regarding them. However, if the meaning of “religion” is the expression of religious beliefs, then the negation of compulsion concerning it would mean that in the scope of the *shari’ah* there is no compulsion to express religious beliefs, and the prohibition of compulsion here would mean that a person should not be compelled to express religious beliefs. It seems that if the meaning of “religion” is the expression of religious beliefs, the negation and prohibition come close to each other in meaning, and it may be said that the words of God, whether declarative or imperative, propound the prohibition of compulsion in the expression of religious beliefs, which implies the general prohibition of killing a human being. When you say, “Do not impose the confession of religious belief on a person,” this means that the life of the person is officially recognized. It cannot be said that those without religion must profess faith or be killed. If compelling a confession of faith in the unity of God (*tawḥīd*) is not permitted, how can a person be killed because of disbelief?

C. The Directive of the Commander of the Faithful, Imam ‘Ali (‘a), to the Governor of Egypt

Imām ‘Ali (‘a) ordered Muḥammad ibn Abū Bakr that the unbelievers who had previously professed Islam should be killed, and that the other unbelievers should be left alone, no matter what

they worshipped.⁷ This hadith may be relied upon if it is not proven that Imām ‘Ali’s order was issued as a matter of political exigency or was issued as the mere denial of the obligation (to kill them). It seems that proving either of these possibilities, which are contrary to the rule, would be no easy matter.

D. The Existence of Idolaters in the Time of the Government of the Prophet of Islam (ﷺ) and the Commander of the Faithful (‘a)

During the time of the caliphate of the Commander of the Faithful, Imam ‘Ali (‘a), when Islamic countries included the likes of Iraq, Iran and Egypt, there definitely were many disbelievers to be found there, aside from the People of the Book and Zoroastrians, and was it not the usual practice of Imām ‘Ali (‘a) to order that they be forced to accept Islam or be slaughtered?⁸

In the time of the government of the Prophet of Islam (ﷺ) in Madinah, there were also idol worshippers: “The infidels of the Quraysh wrote a letter to Abdullah ibn Ubay Salūl and someone from Aws and Khazraj who worshipped idols with him. The Prophet (ﷺ) at that time was in Madinah.”⁹ The people of Mecca were also idolaters, and with the entrance of the Prophet (ﷺ) many became Muslims, but we have no reason to think that all of the people became Muslims.

E. Narrations Implying the Necessity of Collecting Tribute (Jizyah) from the Idolaters

The Prophet of Islam (ﷺ) wrote to the people of Yemen: “Whoever prays our prayers, and faces our direction of prayer (*qiblah*), and eats of that which is slaughtered in our custom is a Muslim. The protection of Allah and His Apostle is given to him, and whoever denies it must pay the tribute (*jizyah*).”¹⁰ According to some narrations,¹¹ the people of Yemen were People of the

Book, but the existence of idolaters (*mushrikīn*) among them is not denied. Likewise, according to some narrations,¹² the tribute is not to be collected from the *Arab* idolaters, and this does not apply to the idolaters generally.

Shāfi‘ī understands the verse of tribute¹³ to mean, ‘You must fight the Jews and Christians until they are killed, they pay the tribute, or they accept Islam.’¹⁴

The killing of infidels who are in a state of war with the Muslims is obligatory (*wājib*), however we have no reason for license to kill idolaters (*mushrikīn*). It is not the case that people must either be Muslims or tributaries (*dhimmī*). Rather, it is possible for them to be those with whom a treaty has been accepted (*mu‘āhad*),¹⁵ those who have been granted security (*musta‘man*),¹⁶ those who have been granted clemency (*muhādan*),¹⁷ conciliators (*muṣālah*)¹⁸ or neutral.¹⁹ With all of these groups it is possible to associate on the basis of contract and humane principles, for even if they are not Muslim brothers in religion, they are human beings.²⁰ Although it is correct to use the expression *kāfir ḥarbī* (war infidel) for infidels who are not *dhimmī*, this term does not specify an infidel who must be engaged in war with the Muslims, rather, it is also possible for them, according to treaty, to be considered as members of one of the groups mentioned above.

Perhaps it will be objected that offensive *jihād* and the verses of the Qur’ān and narrations about *jihād* and fighting refer to the necessity for the killing of idolaters. However, with regard to offensive *jihād* it must be noted there are at least the following opinions.

(1) Some of the Sunni and Shi‘ī religious scholars have not recognized it and have said, “It is not permissible for war to begin from the side of the Muslims because of verses 190-194 of *Sūrah al-Baqarah*.”²¹ “Offensive *jihād* is not permissible because the Prophet, in the wars he fought, killed some, took some as prisoners, some he ransomed, while otherwise, he would have been

obliged to kill all of them.”²²

(2) Others have said, “There is nothing that prohibits offensive *jihād* for the purpose of inviting others to monotheism (*tawhīd*), but the Prophet (ﷺ) did not use this method... and all the wars of the Prophet (ﷺ) were defensive.”²³ Even the Battle of Badr was not offensive, for from the time that the Prophet (ﷺ) first arrived in Madina, he was subject to attack; neither the lives nor the property of the Muslims were secure. Kurz ibn Jābir al-Fihri rustled livestock in the vicinity of Medina. News of this reached the Prophet (ﷺ), who chased after him to the region of Badr, where the latter escaped. This foray occurred ten days after that of *Ashīrah*, and it was after this that the major Battle of Badr took place. Prior to the major Battle of Badr, at least five events of this sort occurred.

(3) Some others have also accepted offensive *jihād*, but by a figure of speech have called it defensive:

By a sort of figure of speech we can include offensive *jihād* among the kinds of defensive *jihād*, for offensive *jihād* is really a defense of the rights of God and the rights of man.... Offensive *jihād* is really a defense of monotheism (*tawhīd*), righteousness and justice, what may be called the defense of humanity.²⁴

(4) Some of those who have considered offensive *jihād* to be permissible have understood its purpose to be the killing of idolaters and the elimination of idolatry. According to the view of Qurṭubī, idolatry (*shirk*) is cause for combat.²⁵ In the view of some, the cause of offensive war is the existence of sedition (*fitnah*), that is, idolatry and disbelief, and if atheism were eliminated, and all people had proper faith, the necessity for *jihād* would lapse. They have also made use of some narrations according to which the only people who have any right to life are the Muslims and the tributaries (*dhimmī*). Among the narrations of

this sort there is one known as ‘the tradition of the swords’²⁶ and there is also the tradition of the Prophet (ﷺ): “I have been charged to fight with the people until they say *lā ilāha illā Allah* (there is no god but Allah), so the property and life of whoever says *lā ilāha illā Allah* are safe.”²⁷ The late ‘Allāmah Ṭabāṭabā’i says: “An intelligent observer will realize at this juncture that Islam should have a defensive system to cleanse the earth of idolatry (*shirk*) of every shade.... The fighting mentioned in the above verses [2:190-195] is for removing idolatry....”²⁸

It would seem that one of the implications of belief in the rightfulness of monotheism is the attempt to cleanse the earth of idolatry and infidelity, but it is worth reflecting on how this holy purpose is to be achieved. Undoubtedly, in confrontation with some idolaters and infidels one must engage in war. However, this is the last resort, not the first. It is quite correct that idolatry is a kind of oppression, and reason judges oppression to be evil, but the judgment of reason that oppression is evil is different from the judgment that it is good to fight the idolaters. Is every oppressor to be killed who does not lift his hand from oppression? It is clear that while this judgment does not clash with what reason regards as self-evident, no rational inference can be used to support it. There is not a single *āyāt* nor narration about fighting the infidels or idolaters or the reasons for offensive *jihād* which gives their lack of a right to life as a cause to legitimate war against them. The first task of the Prophet (ﷺ) was the invitation to monotheism, not the proclamation of war against the idolaters, and from this beginning, many of the idolaters negated the freedom of the Prophet (ﷺ) and plotted to do away with him. The word *al* (*the*) which precedes *kuffār* (*infidels*) and *mushrikīn* (*idolaters*) in the verses of *jihād* is the *al* of familiarity, not the *al* of general distribution, and hence it cannot include absolutely all of them, and it cannot be said that an assault on all infidels, offering them the alternatives of Islam, tribute or death, is religiously legitimate and acceptable according

to Islam, let alone commanded; rather, the continuation of their lives is permitted, according to Islam, unless they attack an Islamic country, or permit the oppression of their own citizens, in which case a war to prevent this may be initiated. Furthermore, on the assumption that the verses of the Noble Qur'ān mentioned pertaining to *jihād* refer to infidels with absolute generality, the absoluteness of these verses is restricted by twelve other verses.²⁹

Therefore, not only is there no religious ordinance to allow the killing of absolutely all idolaters, but the reasons which have been offered by some to justify such permission seem to be insufficient, and so, killing them is not religiously legitimate. If the reasons for the permissibility of collecting tribute from them are sufficient, the governor must also conclude an agreement for the payment of the tribute with them, and if receiving the tribute from them is not stipulated by agreement, in the natural course of events, their affair will fall into the hands of the governor of the Muslims, who, according to another treaty, will determine the conditions of their living in the Muslim country according to the Muslim arbiter. If they accept the conditions proposed by the arbiter, they will remain in the Muslim society, unless they emigrate. Imām 'Ali wrote to Mālik, "If you conclude a treaty between yourself and your enemy, or garb them in the garment of tribute...."³⁰ These words imply that treaties may be made with absolutely any sort of enemy (except, of course, those who are in a state of war with the Muslims), and there is no reason why the application of such a treaty should be confined to infidels who are outside the borders of the Islamic country. Treaties may be concluded with people who are not in a state of war with the Muslims, whether they are within the Islamic territory or outside of it; and if they are People of the Book, a treaty for the payment of tribute may be concluded with them.

LIBERTY

God created man and sent the divine law of the *shari'ah* for him. The *shari'ah* is a collection of laws; through them their Legislator has commanded and prohibited and set limits on human activities. In setting up laws, rational agents will do the same. If the divine prophets had another method for explicating the *shari'ah*, they would have presented it and they would have shown that innovative course to their listeners. It is this very lack of presentation which is the reason for holding that they were rational agents. We have not heard from the tongue of any prophet that God has not given permission for people to make use of the blessings He has given them, or that everyone must get permission for every deed; otherwise it would have to be said, for example, that when the prophet Ādam ('a) was created, prior to receiving permission from God, he was not permitted to close his eyes and he was not permitted to open them! The Prophet of Islam (ﷺ) also began explaining the limitations on human liberty, and he invited people to accept monotheism. So the principle of *authorization* (*ibāḥah*) does not need to be established by the Legislator. In other words, the creation of man with the characteristics he has shows his authorization by the Creator. In accordance with the ordinance of his inner authorization (*ḥujjah*), man will consider it right to make use of the possibilities given by God, and with his acceptance of the *shari'ah*, he will also abide by the commands and prohibitions of the divine Legislator.

Some have said, "The principle of the disposal of the property of others and dominion over it is blocked, and there is no permission for such disposal; and this includes the property of God, too. The reason for this principle is the plain judgment of reason that as long as one does not have permission from its owner, one should not use another's property. Hence, with the establishment of the divine Legislator, permission is given in the form legislated."

It seems that the judgment of reason in the absence of permission to dispose of another's property is limited to relative ownership and cannot be extended to the case of the real ownership of God. The disposal of the property of a person without permission is extortion and an instance of injustice (*ẓulm*), while the disposal of the divine blessings subject to the volition of man is not only rationally unobjectionable, but is also an excellence.

In any case, regardless of whether one believes in the fundamentality of license or in the fundamentality of prohibition, with regard to the limitations on human liberty this will make no difference, for those who believe in the fundamentality of prohibition also say that no matter how much priority this principle is given to make man's not being at liberty a judgment of reason, God, through His absolute and general religious ordinances, has given man permission to dispose of all things, and man, in the performance of any deed, is considered to be at liberty, so that the obligations and prohibitions of the religious law function as restrictions and specifications of that liberty.

In addition to the priority of the principle of liberty (license), whenever man has doubt regarding his duties, and really does not know whether his freedom is limited, by judgment of the principle of innocence (*barā'ah*), that about which the jurist has doubt is to be disregarded. It is only with regard to the decisive divine commands and prohibitions deserve to negate the prior liberty of man. This principle, while it does not deny any objective precept (*ḥukm wāqi'ī*), includes all cases of human doubt (including imaginings, doubts and speculations) about a precept, originating from the lack of textual corroboration, the ambiguity in a religious text that could corroborate the precept, or the existence of conflicting texts. The breadth of the scope of this principle embraces both conduct and speech. According to the words of Imam 'Alī ('a) man is prohibited from asking questions about cases which have no instances, the answer to which would only

increase one's responsibilities: "And He made no pronouncement to you about some things, and not due to forgetfulness, so do not make yourselves burdened regarding them."³¹

In the identification of general precepts, it is assumed that man is at liberty until obligated. Furthermore, obligations which would limit the prior liberty of man so that he could not help but sin are not within the range of the *shari'ah*, which was brought by the Prophet (ﷺ) to be easy. In all of *fiqh*, the ease of human compliance has been taken into consideration; and religion ought to be interpreted in such a way that it will not be incompatible with the social life of the people. People should not feel that there is any conflict between living and being religious; and the precepts which have become legitimate for the sake of the facilitation of compliance should not force one into convoluted practices, so that the philosophy behind their very legitimization goes unrealized or is realized poorly.

The principle or proposition of *no harm* also governs over the general precepts of *fiqh* in such a way that no religious precept may be harmful. In the identification of particular precepts, as well, the rules of *no harm* and *no excessive difficulty* guide the religious so that one will never be compelled to suffer harm or to cause oneself excessive difficulty. One is never obliged by Islam to perform duties which will cause one injury or excessive difficulty. Furthermore, the individual is responsible for recognition of the circumstances in the particular cases to which the relevant precepts are to be applied, and the principle of license also gives man a free hand to perform deeds which are doubtful with regard to these circumstances.

The Liberty of Man before Man

Up to here, we have taken a glance at the liberty of man, generally, before God and man. Additionally, reasons may be found for the liberty of man before other members of his species.

1. The Prohibition Against Having Lords

God does not want people to take some from among them to be lords. Only God is Lord, and no one has a right to impose himself over another as lord. People are not to be subjects under others, nor are they to come under their dominion and tyranny.

Say: 'People of the Book! Come to a word common between us and you, that we serve none but Allah, and that we associate not aught with Him, and we do not some of us take others as Lords, apart from Allah.' And if they turn their backs, say: 'Bear witness that we are Muslims.' (3:63)

It has also been reported that the Commander of the Faithful, Imam 'Ali ('a) has said: "Do not be the servant of another, for Allah has made you free."³²

2. The Obligation for the Removal of Obstacles to the Liberty of the People

The purpose of the mission of the Prophet (ﷺ) has been considered to be the removal of obstacles to the freedom of the people:

Those who follow the Apostle-Prophet, the "Ummi", whom they find written down with them in the Taurat and the Injeel, (who) enjoins them good and forbids them evil, and makes lawful to them the good things and makes unlawful to them impure things, and removes from them their burden and the shackles which were upon them... (7:157)

Poverty and ignorance, discrimination and despotism which are imposed upon the people by prominent members of society, are

brought about through the manipulation of authority and exploitation which are the imposed burden and shackles that the prophets came to remove from the neck of humanity so that man may taste the flavor of freedom. The Commander of the Faithful, Imam ‘Ali (‘a) also gave orders to Mālik Ashtar as follows: “Keep the people from restrictions and pressure.”³³ In the introduction to the *Constitution of the Islamic Republic of Iran* it is also stated: “Considering the essence of this great movement, the constitution guarantees the rejection of any kind of intellectual or social despotism or economic monopoly, and in tearing apart the despotic system, and entrusting the fate of the people to their own hands, an effort is made to remove ‘from them their burden and the shackles which were upon them...’” (7:157).

Therefore, the legitimate governor is not permitted to place restrictions on the people or to apply pressure against them; the liberty of the people must be protected to whatever extent possible. It has also been narrated from the Prophet, (ﷺ) “O Allah! Whoever has guardianship over my community (*ummah*) and who is severe with them, I will be severe with him.”³⁴

3. The Denial of the Rule of Another over an Individual

The rule of dominion over property³⁵ also implies the dominion of the people over their own honor and lives. If the people have dominion over their own property, and others are not permitted to depose of it, then surely, they also have dominion over their own lives, and they can do what they want. Man is possessor of himself, and no one may restrict this possession and dominion of the individual over himself or depose of it. “God, Glory be to Him, has made man as the sovereign over himself and over his own actions, and He has given him absolute sovereignty.”³⁶ The implications of this rule plainly denies the dominion of others over the individual.

Some have explained the absence of guardianship (*wilāyat*)

of man over man and this natural liberty in this manner:

Man has a natural inclination toward the liberty granted him by religion, as opposed to the freedom which is his by nature. Hence, he is at liberty to do what he wants and to refrain from what he does not want without it any human having the right to make a person do something or to keep him from doing something, for all of them are like him, and there is nothing additional in the meaning of humanity for them over him, and by no means are they sovereign over him; and this is the meaning of the natural liberty of man.³⁷

4. Requirement for the Existence of Security in Islamic Society

The creation of social and political security is the responsibility of all people, especially Islamic rulers. The Commander of the Faithful, Imām 'Ali ('a) has explained this point in this way: "O Allah! You know that... we wanted... to usher prosperity in Your cities so that the oppressed among Your creatures may be safe...."³⁸ The purpose of establishing security in the society is so that the people may be able to enjoy all their freedoms without anxiety. Security and liberty are thus closely intertwined. Liberty is established in society in such a way that its enjoyment precludes criminal activities, and the enjoyment of individual and social liberties and tranquillity are not to interfere with one another. Lack of security and turmoil are reminders of a lack of legitimate human liberty.³⁹

Notes

1. Bayhaqī, *Al-Sunan al-Kubrā*, Vol. 9, p. 182.

2. *Wasā'il al-Shi'ah*, Vol. 19, p. 163. The term *dhimmī* is used for the protected religious minorities living under Muslim rule. They are exempt from conscription and are required to pay a special tax called the *jizyah*.

3. *Wasā'il al-Shī'ah*, Vol. 19, p. 15
4. `Amīd Zanjānī, *Islam va Hamzistī Musālamāt āmīz*, p. 107.
5. Cf., *Wasā'il al-Shī'ah* (Qum: *Ahl al-Bayt*), 29, 24, 1 and 2; 15, 321, 4; 29, 16, 19.
6. *Wasā'il al-Shī'ah*, 29, 15, 17.
7. *Wasā'il al-Shī'ah*, Vol. 18, p. 415: “`Alī (`a) appointed Muḥammad ibn Abū Bakr governor of Egypt, then he wrote to `Alī (`a) asking about a Muslim man who had fornicated with a Christian woman, and about the unbelievers among them who worship the sun and the moon, and among them are those who worship other things, and among them are apostates from Islam, and he wrote to ask about what was to be done with the property and children of those who had died [as slaves] and who were contracted for manumission. Then `Alī (`a) wrote to him to carry out the penalty against the Muslim who had fornicated with the Christian woman, and the Christian woman was to be returned to the Christians to be judged by them as they wished. And about the unbelievers he commanded him to kill the atheists who had previously proclaimed Islam, and to leave the rest of them to worship what they wished.”
8. Ḥusayn `Alī Muntaziri, *Wilāyat al-Faqih*, Vol. 3, p. 387.
9. Muḥammad Ḥamidullāh, *Majnu'ah al-Wathā'iq al-Siyāsiyyah*, p. 66.
10. Aḥmadi Miyānaji, *Makātib al-Rasūl*, Vol. 2, p. 373.
11. Bayhaqī, *Al-Sunan al-Kubrā*, Vol. 9, p. 187; *Al-Amwāl*, p. 29.
12. *Wasā'il al-Shī'ah*, Vol. 11, p. 97: “Abū Baṣīr said, ‘I asked Abū `Abdullah (`a) about the tribute (*jizyah*). Then he said, “Allah has forbidden only the tribute from the Arab idolaters.”
13. “Fight those who do not believe in Allah, nor in the Last Day, nor do they prohibit what Allah and His Apostle have prohibited, nor do they follow the religion of truth, of those who have been given the Book, until they pay the tribute with their hand and they remain subjected.” (9:29).
14. Al-Imam al-Shāfi'i, *Al-Umm*, Vol. 4, p. 335. “So, whoever among them [the idolaters, *mushrikīn*] fights the idolaters and who worships rightly and is not of the People of the Book, do not take the tribute from

them, and fight them when you have power over them until you kill them or they submit, and such is the saying of Allah, the Mighty and Glorious, "So when the sacred months have passed..." (9:5), and the saying of the Apostle of Allah (ﷺ), "Fight the people until they say, 'There is no god but Allah'; then when they say it their blood and their property is under my protection, except by rights against them, and their reckoning is with Allah."

15. The reason for this is to be found in the words of God: "Except those of the idolaters with whom you made an agreement, then they have not failed you in anything and have not backed up anyone against you, so fulfill their agreement to the end of their term; surely Allah loves those who are careful (of their duty)." (9:4).

16. The reason for this is to be found in the words of God: "And if any one from the idolaters seeks protection from you, then grant protection to him so he hears the Word of God, then convey him to his place of safety; this is because they are a people who know not." (9:6) Also see *Wasā'il al-Shī'ah*, Vol. 11, p. 49; *Tafsīr Nūr al-Thaqalayn*, Vol. 2, pp. 187-188.

What God says absolutely includes all those who seek refuge with the Islamic government, and there is no discussion of their motivation for seeking refuge. First of all, it does not matter whether the idolater seeks refuge in order to inquire about Islam, to trade, or to prolong his life—even though the intention of inquiry about Islam and the motivation of "so he hears the Word of God" are governed by the command, "then grant protection to him". The Baṣrian grammarians, with regard to sentences in which an element is missing, e.g., in which two verbs occur but only one object, consider the single verb which takes the object to be the second, for with regard to the verb closer to the object, we are certain that they are related. However, as to whether the first verb also takes this object, we are doubtful. Secondly, from the sole fact that a phrase in a sentence may be governed by two verbs, one may not assume that both verbs require an object. Thirdly, assuming that "so he hears", according to the interpretation of the Kufian grammarians

(who held that both verbs must take the object present in the sentence) and the words of Abū al-Saʿūd (cf. Muḥammad Rashīd Riḍā, *Tafsīr al-Manār*, Vol. 10, p. 179), is also associated with “seeks protection”, considering the difference between “hearing” and “listening”, it is clear that the idolater is to be granted security until he hears the Word of God, that is, until he lives among the Muslim people and he hears the Word of God, not that he must necessarily have the intention of inquiry and listening to the Word of God. Fourthly, “It is reported that Ibn ʿAbbas said, ‘One of the idolaters said to ʿAlī ibn Abī Ṭālib (ʿa), “If we want, after the grace period is over, we can go before the Apostle (Ṣ) to hear the Word of God, or for some other need, then will we be killed?” Then he said, “No, for, indeed, God the Exalted said, ‘And if one of the idolaters seeks refuge with you, then give him refuge.’” (Imam Fakhr Rāzī, *Tafsīr al-Kabīr*, Vol. 15, p. 226.)

The late ʿAllāmah Ḥillī, in one place, considers the validity of contracts that guarantee security to be conditional on matters of exigency. (Cf., *Tadhkirah al-Fuḡahāʾ*, Vol. 1, p. 414), while in another place he says, “For the legitimacy of contracts of security, it is enough that they be of no harm to Islam and the Muslims, but there is no condition of exigency for Islam or the Muslims. (*Tadhkirah al-Fuḡahāʾ*, Vol. 1, p. 416), and in yet another place he says, “...no taxes should be collected from an ambassador or from such persons who enter an Islamic country for the sake of inquiry, for there is no obstacle to their entrance even without having permission from the Imam, although they must present reasons to prove their claim.” (*Tadhkirah al-Fuḡahāʾ*, Vol. 1, p. 444).

The validity of a contract of security also does not depend on mention of a certain period of time. The late author of *Jawāhir* says, “Among the principles is, ‘No contract of security shall be for a period of longer than one year, but I do not recall any reason for this temporal limitation of the contract of security, however, the narrations with regard to this issue are absolute.’” (*Jawāhir al-Kalām*, Vol. 21, p. 103.)

If the contract for security had a fixed period and the infidel did

not accept Islam and also did not become a tributary (*dhimmi*), he still cannot be killed or taken captive; rather he must be taken to his own place of safety. Imam Ṣādiq (‘a) said, “Wherever the Prophet (ﷺ) wanted to send a group off to fight, he would first call them before him and seat them there and say to them, ...if one becomes a follower of you, then he is your brother in religion, and if he denies you, then convey him to a place where he will be secure, and ask Allah for help against him.” (*Tafsīr Nūr al-Thaqalayn*, Vol. 2, p. 187). Hence, from the command, “convey him” in the verse one cannot infer that after hearing the Word of God the protected person soon must be returned to his own country, rather, in consideration of the words of the Prophet (ﷺ) we can understand the verse in question (9:6) as meaning that the infidel must be returned after his announcement of opposition. Considering the verses at the beginning of *Sūrah Tawbah* it becomes clear that God is addressing those in a state of war with the opponents of the Muslims, and the verse of granting security is specific to these verses. If one of these idolaters in a state of war with the Muslims seeks refuge, refuge must be given to him, and if he refuses Islam, he must be returned to his own territory, for “when he refused” means that he remains in the condition of religious belief in which he was found, and it is in this state that according to the narration mentioned, one must pray to God for help against him. However, if he does not deny Islam, he may remain in this way within the jurisdiction of the Islamic government until he wishes to return to his own country. In the *tafsīr* of ‘Alī ibn Ibrāhīm it says, “He said, ‘Read for him and make him familiar with [Islam], as long as it does not interfere with him, until he himself returns to the place of his security.’” (*Tafsīr Nūr al-Thaqalayn*, Vol. 2, p. 188.)

17. This term refers to a group or a government which has abandoned war with the Islamic government, following which a specific treaty is announced which forbids war with them for a period. Reference to this is found in the Qur’ān in the following verses: “...then fulfill their pact to the end of their term” (9:4); “...so long as they stand faithful to you,

stand faithful to them” (9:7). According to the *fuḳahā*’ it is acceptable to draw up contracts of clemency for a cease fire with the People of the Book and with idolaters (cf., *Jawāhir al-Kalām*, Vol. 21, p. 294), and its duration is to be mandated in accordance with the opinion of the Imam (cf., *Jawāhir al-Kalām*, Vol. 21, p. 299).

18. This term refers to those with whom a peace treaty is to be signed. “Do not reject the peace to which your enemy may call you and wherein there is the pleasure of Allah, because peace brings rest to your army and relief from your worries and safety for your country. But after peace there is great apprehension about the enemy because often the enemy offers peace to benefit by your negligence. Therefore be cautious and do not act by wishfulness in this matter. If you conclude an agreement between yourself and your enemy or receive his pledge that he will become a *dhimmī*, then fulfill your agreement and keep your [side of the] pledge faithfully.” (*Nahj al-Balāghah*, Letter 53, to Mālik Ashtar).

19. The reason for this is to be found in the word of God, “therefore if they withdraw from you and do not fight you and offer you peace, then Allah has not given you a way against them.” (4:90) However, if they cease being neutral by helping the enemy at a time of war with the Muslims, war against them becomes permissible: “therefore if they do not withdraw from you and surrender seeking peace, nor restrain their hands, then seize them and slay them wherever you find them; and against them of you We have given you a clear authority.” (4:91) A tribe of the Banū Ghanam was neutral in the Battle of Mutah (cf., *Al-Sīrah al-Nabawīyyah*, Vol. 4, p. 24), and a tribe of the Banū Dumrah signed a treaty of neutrality with the Prophet (ﷺ) (cf., *Ṭabaqāt* of Ibn Sa’d, Vol. 2, p. 8), and the Islamic government was also neutral with respect to Ethiopia, and did not interfere with them (cf., *Wasā’il al-Shi’ah*, Vol. 6, p. 42, and *Bidāyah al-Mujtahid*, Vol. 1, p. 381).

20. Imam ‘Alī (‘a) issued the following orders to Mālik Ashtar: “Habituate your heart to mercy for the subjects and to love of them and kindness toward them. Do not be over them like a greedy beast satisfied

to devour them, for they are of two sorts, either they are your brothers in religion, or they are your likes in being people created [by God].” (*Nahj al-Balāghah*, Letter 53, to Mālik Ashtar).

21. This is the view expressed by Muḥammad ‘Abduh in *Tafsīr al-Manār*, pp. 208-212.

22. This is the view expressed by Ibn Taymiyyah in *Al-‘Ilāqāt al-Dawliyyah fī al-Islām*, pp. 122-126.

23. This is the view of Muḥammad Jawād Balāghī, *Al-Raḥlah al-Madrasiyyah*, p. 212.

24. Ḥusayn Ali Muntazirī, *Wilāyah al-Faqīh*, Vol. 1, p. 115.

25. Cf., *Tafsīr Qurṭubī*, Vol. 8, p. 205.

26. *Wasā’il al-Shī‘ah*, Vol. 11, p. 16.

27. *Sunan Abū Dāwūd*, Vol. 3, p. 44.

28. ‘Allāmah Ṭabāṭabā’ī, *Tafsīr al-Mizān*, Vol. 2, p. 66, corresponding to Vol. 3, p. 95 of the English translation.

29. “And fight in the way of Allah with those who fight with you, and do not exceed the limits, surely Allah does not love those who exceed the limits.” (2:190); “...but if they do fight you, then slay them; such is the recompense of the unbelievers.” (2:191); “But if they desist, then surely Allah is Forgiving, Merciful.” (2:192); “And fight with them until there is no persecution, and religion should be only for Allah, but if they desist, then there should be no hostility except against the oppressors.” (2:193); “And what reason have you that you should not fight in the way of Allah and of the weak among the men and the women and the children, (of) those who say: Our Lord! Cause us to go forth from this town, whose people are oppressors, and give us from Thee a guardian and give us from Thee a helper.” (4:75); “...But if they turn back, then seize them and slay them wherever you find them, and take none of them as friends and as helpers. Except those who reach a people between whom and you there is an alliance, or who come to you, their hearts shrinking from fighting you or fighting their own people; and if Allah had pleased, He would have given them power over you, so that they

should have certainly fought you; therefore if they withdraw from you and do not fight you and offer you peace, then Allah has not given you a way against them.” (4:89-90); “You will find others who desire that they should be safe from you and secure from their own people; as often as they are sent back to the mischief they get thrown into it headlong; therefore if they do not withdraw from you, and (do not) offer you peace and restrain their hands, then seize them and kill them wherever you find them; and against these We have given you a clear authority.” (4:91); “And if they break their oaths after their agreement and (openly) revile your religion, then fight the leaders of unbelief, surely their oaths are nothing, so that they may desist.” (9:12); “What! Will you not fight a people who broke their oaths and aimed at the expulsion of the Apostle, and they attacked you first; do you fear them? But Allah is most deserving that you should fear Him, if you are believers.” (9:13); “...and fight the polytheists all together as they fight you all together; and know that Allah is with the pious.” (9:36); “Permission (to fight) is given to those upon whom war is made because they are oppressed, and most surely Allah is well able to assist them;” (22:39); “And if two parties of the believers quarrel, make peace between them; but if one of them acts wrongfully towards the other, fight that which acts wrongfully until it returns to Allah’s command; then if it returns, make peace between them with justice and act equitably; surely Allah loves those who act equitably.” (49:9).

30. *Nahj al-Balāghah*, Letter 53.

31. *Nahj al-Balāghah*, *Ḥikmah* 105.

32. *Nahj al-Balāghah*, Letter 31.

33. *Nahj al-Balāghah*, Letter 53.

34. *Ṣaḥīḥ al-Muslim*, with the commentary of al-Imam al-Nawawī, Vol. 12, p. 213.

35. “The people are to have dominion over their property.” *Biḥār al-Anwār*, Vol. 1, p. 154.

36. *Tafsīr al-Mizān*, Vol. 16, p. 68.

37. *Tafsīr al-Mizān*, Vol. 16, p. 67.

38. *Nahj al-Balāghah*, (Dr. Şubḥī al-Şālih's edition), Sermon 131.

39. The necessity of the existence of security in an Islamic community can be proved by the following reasons:

A. There is a rule in Islamic jurisprudence (*fiqh*) according to which the people are considered to have a *prima facie* innocence from sin with regard to the performance of an action. It has been narrated from the Prophet (ﷺ), "...all the people of my *ummah* (community) will be forgiven except those who perpetrate offenses against us." (*Şaḥīḥ al-Bukhārī*, *Kitāb al-adab*, *ḥadīth* 60; *Şaḥīḥ al-Muslim*, *Kitāb al-zuhd*, *ḥadīth* 52.) And Imam 'Alī ('a) said, "The worst guardians are those of whom the innocent people are afraid." *Ghurar wa Durar (Urmavī)*, Vol. 4, p. 166. It is also stated in article 37 of the Constitution of the Islamic Republic of Iran: "Article: there is to be a presumption of innocence, and no one will be considered by the law as a criminal unless his crime is proven in a legitimate court of law."

B. Another jurisprudential rule is the presumption of the correctness of the works of others. (Sayyid Muḥammad Kāzīm Muştāfawī, *Al-Qawā'id*, p. 153.) It is reported that the Prophet (ﷺ) said, "Whenever the governor is suspicious of the people, he corrupts them." Bayhaqī, *Al-Sunan al-Kubrā*, Vol. 8, p. 333; *Musnad Aḥmad ibn Ḥanbal*, Vol. 6, p. 4. The rejection of harboring suspicions about individuals is also in order to create security in the society. "O you who believe, avoid most suspicions, for indeed, some suspicions are sins..." (49:12)

C. The prohibition against spying: "...and do not spy, nor let some of you backbite the others..." (49:12).

D. The prohibition against punishing some for the crimes of others, e.g., group punishments.

E. Equality before the law. If all the people of the community were not equal before the law, everyone would be in a state of constant anxiety about how he will be treated. Those who possess wealth and power would always be able benefit from legal and illegal expedients,

and thereby, the security of the community would be destroyed. Imām ‘Alī (‘a) wrote to Aswad ibn Qutbah, the Governor of the Persian province of Ḥulwān, “The affairs of your people should be given an equal right. Tyranny is no substitute for justice.” (*Nahj al-Balāghah*, Letter 59.) In the nineteenth article of the Constitution of the Islamic Republic of Iran it is also stated: “The people of Iran, regardless of tribe or clan, are to be accorded equal rights, and color, race, language and the like, are no cause for distinction.” In the twentieth article it says, “All individuals of the nation, including women and men, are equal according to the law, and are to enjoy all human, political, economic, social and cultural rights in accordance with the scale of Islam.”

F. The obligation to have sincerity in action. The emphasis Islam places on sincerity in action, such that without sincerity, no human action is deemed to be acceptable to God, implies that for the most part people should be left at liberty. With respect to the infidels, God wants that if they accept Islam, that they should do so sincerely, not deceitfully or hypocritically, for the danger of hypocrisy is greater than that of infidelity and idolatry in an Islamic society. With respect to the Muslims, God wants their actions to be free from duplicity. The intention of nearness to God and sincerity are incompatible with coercion. To the extent that acts of worship, which the people have a right not to perform, are spoiled by coercion, the people or government may use force to obtain those rights. While it is required of the individual that worship be performed for the sake of nearness to God, the spirit of worship is in harmony with liberty. Sincere deeds and beliefs may be found only in the light of the existence of security and liberty in the society.

The Fundamentality of Existence in Mullā Şadrā's Philosophy: A Brief Sketch

by Muḥammad Taqī Mişbāḥ Yazdī

translated by A. N. Bāqirshāhī

The first condition for any discussion, discourse and sorting out of a proper solution for any problem, is to have a clear picture of the subject in question. This is true, particularly, in the case of philosophical issues which contain abstract concepts and are beyond the access of persons innocent of philosophy. To have a clear picture of the subject and predicate of such issues requires laborious practice and meticulous study which not anyone can do. Undoubtedly, a proper and clear concept of philosophical issues can help the solution of those problems.

Since the time of the great Muslim philosopher, Şadr al-Muta'allihin, popularly known as Mullā Şadrā, the issue of *aşālat-e wujūd* or *aşālat-e māhiyyah* (fundamentality of being or quiddity) appears to be a basic and independent issue in philosophy. However, this issue has its root and background in the books of the past philosophers. This issue is one of the meticulous philosophical

issues the comprehension of which requires special interest and practice in Islamic philosophy.

Moreover, the above mentioned issue has certain backgrounds and precedents that in the course of time paved the way for the appearance of the issue of the fundamentality of being as a fundamental issue in Islamic philosophy. Thus, a careful study of such issues would be necessary for its comprehension and making judgement about it.

Furthermore, to believe in *aṣālat-e wujūd* may lead to certain consequences and effect other philosophical issues as well. Thus, it is necessary to take this issue into account seriously and find out an ultimate solution to it.

In brief, to put this issue in historical perspective and study its backgrounds and precedents, to explain the reasoning of both sides, to study it critically, and to study its implications for other philosophical problems, require comprehensive discussions. Thus, it is not possible to deal with all these issues in this short article. In this respect I have written a book namely, *Amūzish-e Falsafah* (Philosophical Instructions) for newcomers to Islamic philosophy, and *Ta'liqah bār Nihāyah al-Hikmah* (A Gloss on *Nihāyah*) where I have discussed this issue in an exhaustive manner. In the present article, I am only going to mention some points that might be interesting for the experts of philosophy and are also helpful for the newcomers in philosophy.

1. By ascribing *wujūd* (existence) or *māhiyyah* (quiddity) to external objects, philosophers do not mean that every thing has two distinct objective existences, in a way separable in external world, rather they mean that such distinction and separation would occur in the mind only. For instance when we come to know about an element like uranium, though we become aware of one thing and this awareness can be expressed in one proposition which is combined of two concepts as we say: 'there is uranium' or 'uranium exists'. Here the concept of 'uranium' signifies a kind of quiddity

and the existence of 'uranium' signifies its external manifestation. Thus, we ascribe two notions of essential and existential characteristics for a single object the plurality and distinction between which has taken place in mind only not in external world.

2. As is known, in ancient times some of the philosophers were dubious about the existence of external things as well as the knowability of things. The most extreme statement in this regard is that of Gorgias who said: "Nothing exist; that if anything exists, it is unknowable." Such statements first put into question the existence of the external thing, then rules out the possibility of its knowability. Here both ontological and epistemological inquiries emerge from the question. Such dichotomy ultimately would grow into the dichotomy of existence and quiddity in philosophy.

3. Here a clarification should be made between existentialism in the Western context and that of *aṣālat-e wujūd* in Islamic philosophy particularly in Mullā Ṣadrā's philosophy. According to the philosophy of existentialism, the existence of man precedes its essence, that is, man can determine his essence to enjoy freedom. But Mullā Ṣadrā's concept of being is totally different from that of Western concept. Henceforth, it is necessary to explain the concept of *aṣālat* with reference to the origin of this issue in philosophy and shed some light on the factors underlying the fundamentality of such idea in Mullā Ṣadrā's Philosophy.

4. The classification of the things in ancient times was based on their basic differences. Accordingly, those things which share a common feature were subsumed under one category, though they might have had certain minor differences. Those philosophers who attempt to delve into such differences and scrutinize them deeply classify the difference of things into two categories: (1) *amr-e dhātī* (essential properties); (2) *amr-e 'araḍī* (accidental properties). Differences in some *amr-e dhātī* results in diversity of species, and difference in others cause diversity of genus. The Aristotelians subsumed all contingent things under ten categories.

For instance, they consider the horse and the cow as two species, while trees and animals are of two genres and both of them are subsumed under a higher genus namely substance.

Furthermore, individuals having essential properties in common have the same essence or type, knowledge of which is considered perfect knowledge of the object. For instance, population, growth, and reproduction are the essence of vegetation, and if we add sense and voluntary activity to them, then they would be called animal, and including reason they constitute the essence of man. As we see, all individuals of a type possess these essences potentially. In other words, essences of the species constitute the universal forms of the individuals. In sum, the essence of anything is one or some universal forms. A question may arise in the mind about how a universal essence change into a particular individual? The answer is that individual accidents like colour, shape, time, and place underlie the distinctions among things.

The forgoing idea had been taken for granted by philosophers for many years. Thus, the issue of universal essences was the pivot of philosophical discussions and paved the way for believing in the fundamentality of quiddity. After some time an objection was raised against this philosophical outlook: accidents are also universal essences and included in nine categories of the Aristotelians, so how do the accidents such as white or black colours which are universal, change into an individual substance.

As it is said that Fārābī was the first Muslim philosopher who tried to answer this problem by saying that no essence has individuality in itself and even by inclusion of hundreds of essences, it cannot obtain individuality. It is being that is individual and determined in itself. Thus, individuality of a substantial and accidental essence depends on the individuality of its being. In this way, he planted the sapling of the fundamentality of being.

Afterwards, Shihāb al-Dīn Suhrawardī (known as Shaykh-e Ishrāq) opened interesting inquiries on intellectual considerations

and metaphysical concepts in his philosophy and subsumed the concept of being under the intellectual consideration. Owing to this outlook, he came to be known as the exponent of the theory of *aṣālat-e māhiyyah* in Islamic philosophy. After centuries, Ṣadr al-Muta'allihin, the renowned Muslim philosopher appeared and discovered the significant role of the theory of *aṣālat-e wujūd* which was helpful in resolving metaphysical problems. It is to be pointed out that in the early period of his philosophical development, Mullā Ṣadrā was a staunch supporter of Shaykh-e Ishrāq's idea, but later on he changed his idea and advocated the fundamentality of being.

According to *aṣālat-e māhiyyah* essences are permanent and unchangeable things; therefore, change in essence is impossible. But in the external world we see many things that are subject to change, that is, at any stage of their developments they obtain a new essence, and according to this approach a thing at any stage would require a new essence and there would be the generation and corruption of essences without retaining their identities. While, according to *aṣālat-e wujūd*, the identity of changeable things would be retained, for only the grade of their existence would change, that is, their existence becomes weaker or stronger. In other words, the limits of their existence would change. Indeed, essences are the metaphysical forms signifying the limits of their existence, and various essences are compatible with a single existent. Through this approach the unity of a thing remains intact.

5. In order to elucidate the notion of essence versus being in Mullā Ṣadrā's philosophy, let us refer to an example: if we cut a piece of paper and form a triangle or a square, here we have not added any object to it, yet, at the same time each piece has its own peculiarity which is attributed to non-existence, and out of non-existential affairs, concepts like triangle or square, etc., appear. Likewise, when a being ascends from the stage of inanimateness and acquires the ability of growth and reproduction, its identity is

not destroyed, rather in the new situation it acquires a new conceptual form, namely plant. Similarly, when it finds sensation and ability to control its actions, another new conceptual mould or essence emerges, namely animal. Thus, what fundamentally exists is being and essence only signifies the limits of existence. In another words, essence is form and being as its content.

6. One of the conclusions of the doctrine of the fundamentality of being is that since a being (i.e., God) is infinite in respect to existential perfection, we cannot attribute non-existential attributes to Him, hence, we cannot attribute any essence to Him for, He is 'sheer existence'. That is, His essence is inconceivable and the human mind is unable to conceive such infinite Being. Only through immediate knowledge and mystical intuition is it possible to conceive such infinite Being, not as He is, but according man's capacity.

7. The last evidence supporting the doctrine of the fundamentality of being as advanced by Mullā Ṣadrā is that if we consider the essence as in itself we can deny its existence, for instance we can deny the existence of a real circle in the world. Thus, essence is indifferent to existence and nonexistence, so, such notions cannot be the source of objective things in the world. It is being that is the source of every thing. There are many other reasons supporting the doctrine of the fundamentality of being that we cannot discuss here due to the brevity of this article. Those who are interested to know in detail can refer to the first volume of Mullā Ṣadrā's book *Asfār*.

ISLAMIC PERSONALITIES:

Mir Ḥamid Ḥusayn Mūsawī

by: Sayyid 'Alī Shahbāz

Mir Ḥamid Ḥusayn Mūsawī al-Nishāpūri needs no introduction to the world of scholars and learning. He strode tall among the luminaries of the 13th-14th century A. H., and although he wrote several books, his lasting fame rests on his magnum opus *'Abaqāt al-Anwār fī Ithbāt Imamah al-A'immah al-Aṭḥār* which helped unmask sordid sectarianism and continues to serve as a barometer for the eternal truth of Islam.

He was born in Lucknow in 1246 A. H (1831 A.D.) and grew up in one of the most critical periods of Indian history. On the political front, the fortunes of the ruling Nishapuri House of Oudh with all its fabled opulence were on the decline. The British, who had been gradually tightening their tentacles around the Indian rulers were about to squeeze whatever powers that the Nawabs (Amjad 'Alī Shah and his son Wājid 'Alī Shah) could claim to exercise. On the cultural front, the colonialist overlords had been tacitly lending support to sectarian differences and cherished

nothing more than to see the deteriorating fabric of Muslim society torn completely apart.

Those were the years when sedition was beginning to raise its ugly head and as part of these divisive efforts a highly schismatic work titled *Tuḡfah-ye Ithnā ‘Ashariyyah* had appeared in Persian -- some two decades before the birth of Mir Ḥamid Ḥusayn. It immediately aroused the wrath of *ulamā’* and refutations and counter claims began to appear, igniting a war of polemics that continued for well over half a century and threatened to spread beyond India, while the scheming British consolidated their hold on the subcontinent. However, it was left to Ḥamid Ḥusayn to nail the eventual lie with his monumental work, which laid to rest the controversy in a very rational manner and affirmed the pure and untainted path of the Prophet’s Household, also known as *Maktab-e Tashayyu’*.

Although his style of argumentation was not new, Ḥamid Ḥusayn’s *‘Abaqāt al-Anwār* covered a very wide field that no other scholar ever trod before. If his work was not unprecedented, the works of the opponents of Tashayyu’ had also a long history. But Ḥamid Ḥusayn, though he has addressed himself to the cause of the book --Shah ‘Abdul ‘Aziz Dehlavī (Shah Ṣāḡib as he says)-- he literally put on trial all and everybody else including narrators of *ḡadith*, exegetes, theologians, historians, philologists, scholars and the literati who attempted to conceal the truth, and on the basis of their own writings he exposed them, extracting out confessions and proving in an eloquent style of debate the invalidity of their views.

Perhaps it is for this reason that a prominent researcher of our own times, ‘Allāmah Muḡammad Riḡā Ḥakīmī, has hailed Ḥamid Ḥusayn as among the ‘Wardens of Marches of the Immortal Epic’ (*Marzbānān-e Ḥemāseh-ye Jāvid*). But Before dwelling on the life of this great scholar and his work, it is important to note the spread of Islam particularly Tashayyu’ to the subcontinent.

Tashayyu‘

Islam and Tashayyu‘ are synonyms for each other. Islam, after the Prophet (ﷺ), has continued under the name of Tashayyu‘, while Tashayyu‘ is nothing but continuation of the teachings of Islam in its most genuine and purest form.

To state more clearly, What the verses of the Holy Qur‘ān stress and what can be so clearly evinced from the practice (*Sunnah*) and sayings (*Ḥadith*) of Prophet Muḥammad (ﷺ) and confirmed as a duty for all Muslims, is that measuring gauge of faith called Tashayyu‘. In other words, Tashayyu‘ with its rich and profound manifestation is what the Qur‘ān and the Prophet have stressed in relation to the issue of *Waṣāyā* (vicegerency), *Wilāyah* (divinely-obliged love for the *Ahl al-Bayt*) and Imamate (leadership), for the Ummah in the post-revelation and post-prophethood period.

Perhaps the most undeniable proof in this regard is that famous and often repeated saying of Prophet Muḥammad (ﷺ) known as *Ḥadith al-Thaqalayn*, in which --as acknowledged by all denominations of Islam-- the Almighty’s last Messenger to mankind warned against discord and urged the Ummah to hold fast to the “Book of Allah and my progeny.”¹

Tashayyu‘ in the Subcontinent

With the expansion of the political frontiers of the Islamic realm, it was but natural for Tashayyu‘ to spread to other lands including the subcontinent. The Muslims entered India through Iran and what is now Afghanistan during the reign of the 2nd caliph and made inroads into Sindh during the four-and-a-half year temporal rule of Imam ‘Ali ibn Abi Ṭālib (‘a). With the seizure of power of the Islamic state by the Umayyuds, the attacks of the Arab armies increased and large areas of Sindh were conquered. By the time the Abbasids grabbed the caliphate, some of the local

Indian rulers had embraced Islam, and among the governors, commanders and soldiers sent by the new authorities to the province of Sindh there were some followers of the Prophet's Household. Thus the ground was paved for the introduction and spread of Tashayyu' to the subcontinent.²

According to the historian Ibn al-Athir, the reason that caliph Maṣṣūr replaced 'Umar bin Ḥafṣ as the governor of Sindh with Hisham bin 'Amr Taghlibi in 151 A. H. was his having a soft corner for the Prophets progeny. During the uprising in Ḥijāz of Muḥammad 'Nafs al-Zakiyyah' (the pure soul) and his brother Ibrāhīm --sons of 'Abdullāh al-Maḥḍ ibn Ḥasan al-Muthannā ibn Imam Ḥasan al-Mujtabā ('a)-- Muḥammad sent his son 'Abdullāh also called 'Ashtar' to Baṣrah, to buy horses and proceed to Sindh, because among Maṣṣūr's governors, 'Umar bin Ḥafṣ had secretly pledged allegiance to Nafs al-Zakiyyah and was a Shi'ah. Abdullah reached Sindh, where 'Umar provided him security and secured the allegiance of his family, his commanders and the notables of the place to the cause of the Prophet's Household. He also changed the black colours of the Abbasids to white and was contemplating public proclamation of the uprising, when news reached him of the martyrdom in Ḥijāz of Nafs al-Zakiyyah. 'Umar revised his plans and arranged for the asylum of the bereaved 'Abdullāh Ashtar at the court of one of the local rulers of Sindh who had sentiments for the Prophet. Soon Zaydī Shi'ites joined 'Abdullāh till he had 400 loyal men around him. But 'Abdullāh was destined for martyrdom which he achieved along with his host the Sindhi ruler during battle with Asfanj the brother of Maṣṣūr's new governor Hishām bin 'Amr Taghlibi.³

Thus it can be said that Tashayyu' made its advent in the Indian subcontinent at a very early date. Another indication in this regard is the letter and gifts received by Imam Ja'far al-Ṣādiq ('a) from an Indian ruler with appreciation for having been guided.

In the centuries that followed, especially during Ghaznavid rule, there were periodic persecution of the Shi'ites in Sindh and the Punjab. In 588 A. H. (1192 A.D.), Sulṭān Muḥammad bin Sam Ghurī, became the first Muslim ruler to subjugate the whole northern half of the subcontinent and establish Delhi as the capital of Muslim India. Muḥammad Ghurī traced his lineage from Shansab who had embraced Islam during the caliphate of Imam 'Ali ('a) and had been appointed as ruler of the Ghur region around Herat. According to historical testimony, during Umayyud rule, the people of Ghur had refused to insult the memory of Imam 'Ali ('a) despite the public cursing of the Prophet's vicegerent by the caliphal authorities for 70-odd years.⁴

However, as testified by several historians it was the region of Gujrat, especially its northern parts where Tashayyu' gained a foothold and where the local rulers, who had maintained trade relations with the Arabs since the pre-Islamic days, welcomed Shi'ite preachers and merchants with the result that several Gujratis forsook idolatry and became Muslims.⁵

One of the early Shi'ahs to come to Gujrat was Shaykh 'Ali al-Ḥaydari who settled in Cambay at the closing of the 7th century A. H. (14th century A.D.) and enlightened many Gujratis with the teachings of Islam. He was executed by Sulṭān Muḥammad Tughlaq of Delhi for his missionary activities.⁶

Down south in the Deccan, Tashayyu' began its spread with the establishment of the Bahmani Kingdom (748 A. H./1347 A.D.) and the arrival of waves of immigrants from Iran and to a lesser extent from Iraq, Yemen and Ḥijāz. Less than a century later, it became fully manifest as could be seen by the Ni'matullāhi order of Shi'ah Sufis who dominated court life at Bidar. With the disintegration of Bahmani rule, three of the five dynasties that emerged in the Deccan were Shi'ahs, and in fact, Yūsuf 'Ādil Shah's proclamation of Tashayyu' in 898 A. H. (1492 A.D.) in Bijapur, was not only the first instance of Shi'ite state rule in the

subcontinent, but it preceded the formal establishment of Tashayyu' in Iran by Shah Ismā'il Ṣafavī (907 A. H./1501 A.D.) by almost a decade.

It would be tedious to go into details of the Ja'fari or Imāmi legal system at work and the 'ulamā' of the Deccan, although it is of relevance to the later emergence of Tashayyu' in Oudh (north India) and Mīr Ḥamid Ḥusayn's work '*Abaqāt*'. A few names could however be mentioned here such as Shah Ṭāhir Ḥusaynī of Hamedan who won over Burhān Nizāmshah of Ahmadnagar (914 A. H.) and thousands of people to Tashayyu', and the great scholar Mīr Mu'min Istarābādī whose arrival from Iran strengthened the ideological base of the Quṭb Shāhi rulers of Golconda and led to the foundation of the city of Hyderabad around 1000 A. H. (1591 A.D.).

Tashayyu' in northern India, despite its appearance in Kashmir in 892 A. H. (1486 A.D.) with the arrival of Shams al-dīn al-'Irāqī and his successful missionary role which was instrumental in the brief rise to power of the Shi'ite Chak rulers (1561-89 A.D.), had to wait for over three centuries to take the form of state rule in Oudh under Mīr Muḥammad Amin Nishapuri titled 'Burhān al-Mulk'.⁷ In between during the Mughal period, especially after Humayun's successful reconquest of north India with Persian help and the loyal services of his own staunch Shi'ite noble, Bairam Khan, there was a steady and gradual flow of all classes of Shi'ites from Iran, among them the great scholar Qāḍi Sayyid Nūrullāh Shūshtarī (956-1019 A. H.) who attained martyrdom for his defence of the faith. His works include *Iḥqāq al-Ḥaqq* which is a refutation of Faḍlullāh Ibn Rūzbehān Khunji's schismatic book *Ibṭāl Nahj al-Bāṭil wa Ihmāl Kashf al-'Āṭil*.⁸ Qāḍi also wrote *Al-Ṣawārim al-Muḥriqah* in answer to Ibn Ḥajar Makki's *Al-Ṣawā'iq al-Muḥriqah*

With the weakening of Mughal authority at Delhi especially after Nādir Shah's invasion in 1151 A. H. (1738 A.D.), the

provincial governors became practically independent, and of the new states which emerged, Tashayyū' dominated Oudh and the short-lived state of Bengal. It was the Nishāpūri House of Oudh (1135-1275 A. H./1722-1859 A.D.) which attracted scholars from Iran, Kashmir and elsewhere, and it fell to the lot of Sayyid Dildār 'Alī Naṣirābādī and his students including Sayyid Muḥammad Qulī Mūsawī Kinturi (the father of Mir Ḥamid Ḥusayn), to rejuvenate the society of Lucknow with their outstanding contributions.

Mir Ḥamid Ḥusayn's Family

As mentioned earlier, Mir Ḥamid Ḥusayn's ancestors had migrated to India from Nishapur in Khorāsān and traced their lineage to Imam Mūsā al-Kāzīm ('a), the 7th infallible successor of the Prophet. His father Sayyid Muḥammad Qulī Kinturi, was a scholar of repute, and after serving as Ṣadr Amin (principal) at the British court in Meerut, settled in Lucknow where in 1843 A.D. he wrote in Persian *Aḥkām-e 'Adālat-e 'Alawiyyah*, a treatise on court system which laid the foundation of the legal system of Oudh under Amjad 'Alī Shah. In it he explained the difference between the Qāḍī (who makes specific judgements in disputes between parties) and the *Muftī* (who gives general pronouncements in elucidation of the law) and urged the government to promote the Imami legal system as had been done by the Quṭb Shāhis in the Deccan and by the Buyids and Safavids in Iraq and Iran.⁹

Ḥamid Ḥusayn's elder brothers, Sayyid Sirāj Ḥusayn and Sayyid E'jāz Ḥusayn were both scholars. E'jāz Ḥusayn, better known as Kinturi, served as head clerk of the Chief Minister's Office, and although he helped organize bureaucracy under the British Judicial Commissioner, his house was torn down and looted by the British troops during the violent events of 1857.¹⁰

E'jāz Ḥusayn authored several books including *Kashf al-Hujub wa al-Astār* and *Shudhūr al-Itqān fī Tarājim al-A'yān* in Arabic and also helped Ḥamid Ḥusayn compile in Persian the 10-

volume work *Istiqsā' al-Afhām*,¹¹ which is a refutation of *Muntahā al-Kalām* of Shaykh Ḥaydar 'Alī Fayḡābādi on the alleged interpolation in the Holy Qur'ān.

Mir Ḥamid Ḥusayn was educated by his father in the basic sciences and later learned *fiqh* and *uṣūl* under Sayyid Ḥusayn Naḡawī, philosophy and logic under Sayyid Murtaḡā bin Sayyid Muḡammad and literature under *Muḡfi* Sayyid Muḡammad 'Abbās. He was a prolific writer and was gifted with an encyclopedic memory. He thus felt it his duty to enlighten public minds and cleanse the atmosphere of the trail of sectarian pollution left by *Tuḡfah-ye Ithnā 'Ashariyyah*. The result was *'Abaḡāt al-Anwār* which literally means 'Fragrance of Lights'. To the world of learning the book came as a waft of fresh air, blowing away polemical mist and highlighting the facts of faith as presented by the Qur'ān and the Prophet (Ṣ). Before proceeding further, a few words on the cause of schism would not be inappropriate.

Cause of Schism

In that critical period of Indian history, when the British were on the lookout for every single opportunity to tighten their stranglehold on the subcontinent, and when Islam still presented the greatest unifying factor against colonialist designs, a Naḡshbandi Sufi scholar, unfortunately fell prey to innate prejudices and created the greatest sectarian discord in India. Shah 'Abdul-'Azīz (d. 1239 A. H.), son of Shah Waliyullāh 'Muḡaddith Dehlavi', did a great disservice to Islam by writing *Tuḡfah-ye Ithnā 'Ashariyyah*. He thereby unleashed a fierce polemic controversy and showed the utmost disregard for the express commandments of the Holy Qur'ān on unity such as the verses "*The believers are but brothers, therefore make peace between your brethren...*" (10:49), and "*Hold fast to the Rope of Allah, all of you together and be not dispersed*" (3:103)

Driven by deep-rooted antipathy towards the Shi'ites, Shah 'Abdul 'Aziz was blind to reason. He neither seemed to have regard for traditions and practice of the Prophet (ﷺ) and historical facts, nor for the interests of the Ummah which were being threatened by colonialism. The British were naturally pleased with his work and spared no efforts in promoting it. The book had nothing scholarly in its contents and its baseless allegations against Tashayyu' were intended more to appeal to the emotions of ignorant and uncultured elements in order to fan the flames of hatred and division among the masses. In fact, the *Tuḥfah* contained nothing new and was outright piracy from unauthentic sectarian literature and was a Persian rendering of Khwajah Naṣrullāh Kabuli's *Ṣawāqi'*.

On one hand the colonialists were pleased and spared no efforts in promoting the work while on the other hand, like-minded sectarian elements seized the opportunity to publicize its contents in other languages. In 1227 A. H. a certain Ghulām Muḥammad Muḥy al-din Aslamī of Madras published its Arabic translation and decades later Maḥmūd Shukrī Ālūsī summarized it in Baghdad for presentation to the Ottoman Sulṭān.

Reaction

Reaction to the schism was swift, and scholars lost no time in writing refutations. Among those who exposed Shah 'Abdul 'Aziz's groundless claims was Sayyid Dildār 'Alī Naṣīrābādī who wrote *Ṣawārim al-Ilāhiyyah* and his son Sayyid Muḥammad Naṣīrābādī whose replies include *Al-Bawāriq fī Mabḥath al-Imāmah* and *Ṭa'n al-Rimāh fī Mabḥath al-Fadak wa al-Qirṭās*. Ḥamid Ḥusayn's own father Sayyid Muḥammad Quli wrote several treatises on the different chapters of the *Tuḥfah*, and titled them *Sayf al-Nāṣirī*, *Taqḥīb al-Makā'd*, *Burhān al-Sa'ādah* and *Maṣāri' al-Afhām*. A certain Rashiduddin Dehlavi wrote against Sayf al-

Nāṣiri a book titled *Iḍāḥ Liṭāfat al-Maqāl* and Muḥammad Quli countered him with *Ajwibah al-Fākhirah*.

The atmosphere of India became highly surcharged and for years the fire of polemics raged with emotions running high on both sides, while the British slowly eroded the centuries-old cultural domination of Muslims. There was even deegratory literature published on either side which made matters worse.

Therefore, Mir Ḥamid Ḥusayn resolved to strike an iconoclastic blow at the myths of the *Tuḥfah* and expose once and for ever the fallacy of 'Abdul 'Aziz's writings. In an undaunted manner he embarked on his great venture which took him several years during which he visited the libraries in India and abroad and painstakingly accumulated a mine of factual transmissions from leading Sunni authorities on the superiority and excellence of the Prophet's Household.

The result was the great work in Persian titled '*Abaqāt al-Anwār*' spanning several volumes of which 15 volumes are on twelve of the unanimously acknowledged sayings of the Prophet which prove beyond an iota of doubt the Imamate of the *Ahl al-Bayt*. He wrote in an eloquent style and scientifically scrutinized not only what the *Tuḥfah* had to say but what others had said over the centuries, and he disproved the allegations piece by piece on the basis of the Holy Qur'ān, the Prophet's authentic traditions, the human intellect and the grains of truth concealed in the writings of prominent Sunni authorities themselves.

'Abaqāt al-Anwār

Mir Ḥamid Ḥusayn's masterpiece was widely acclaimed. It was hailed by all leading scholars as a wonderful work free of sectarian prejudice. Several '*ulamā*' such as Shaykh Zayn al-'Ābidin Māzandarāni, Shaykh 'Abbās Hindī Shirwāni and the leading *Mujtahid* in Najaf, Mirzā Muḥammad Ḥasan Shirāzi, wrote commentaries on it. Mirzā Shirāzi, whose famous *fatwā* on

prohibition of tobacco thwarted British designs on Iranian economy, has paid glowing tributes to the book in his correspondence with Mīr Ḥamīd Ḥusayn. The author of *'Abaqāt* thus accomplished a God-pleasing job true to the *ḥadīth* of the Prophet (ﷺ) which says: Allah likes a person who does his work efficiently and wisely.

Ḥamīd Ḥusayn's meticulousness is evident throughout his voluminous work. The first few volumes of the *'Abaqāt* invalidate the charges of the *Tuhfah* in the light of the verses of the Holy Qur'ān and confirm that leadership after the Prophethood has not been left to the whims of erring mortals but is rather a divinely decreed affair.

Of the next 15 volumes, the first two present an exhaustive material on the event of Ghadīr, listing the chains of transmission and the names of narrators and examining in detail the lexical and all other aspects of the Prophet's (ﷺ) wordings *'Man Kuntu Mawlāhu fa Hādihā 'Aliyyun Mawlāh'* (For whosoever I am master this 'Ali is his master).¹²

The 3rd volume deals with *Ḥadīth al-Manzilah* ('Ali's position to me is that of Aaron to Moses),¹³ the 4th discusses *Ḥadīth al-Wilāyah* (Indeed 'Ali is from me and I am from 'Ali and he is the master of all believers after me),¹⁴ and the 5th focuses on *Ḥadīth al-Ṭayr* (the narration from Anas ibn Mālik that the Prophet while eating a roasted bird prayed to Allah to make the best of the believers join him. Imam 'Ali immediately appeared at the door, and as Anas admits, thrice he tried to stop him before relenting finally, while the Prophet (ﷺ) inquired from inside whether anyone had yet come).¹⁵

The 6th and 7th volumes of *'Abaqāt* examine in detail *Ḥadīth Madīnah al-'Ilm* (I am the city of knowledge and 'Ali is its gate and whoever wishes to enter the city should come through the gate),¹⁶ the 8th analyzes *Ḥadīth al-Tashbih* (Whoever wants to see Ādam and Noah should look at 'Ali)¹⁷, the 9th probes *Ḥadīth al-*

Nāsibi (Whoever quarrels with ‘Ali in the matter of caliphate is an infidel),¹⁸ the 10th highlights *Ḥadīth al-Nūr* (I and ‘Ali were a light...),¹⁹ and the 11th brings into prominence the *Ḥadīth al-Rāyah* on the Day of Khaybar (I will give the standard to the one who loves Allah and the Prophet and is loved by Allah and the Prophet in turn; who attacks valiantly and never retreats from the battlefield).²⁰

The 12th volume ascertains *Ḥadīth al-Ḥaqq* (‘Ali is with truth and truth is with ‘Ali),²¹ the 13th probes *Ḥadīth al-Qitāl* (‘Ali would fight for interpretation of the Holy Qur’ān as he had fought for its revelation),²² and the last two volumes project *Ḥadīth al-Thaqalayn* (I am leaving among you the two weighty things, the Book of Allah and my progeny. Hold fast to them for they will never separate until they meet me at the pool of *Kawthar*).

Ḥāmid Ḥusayn thus drove home the point that since Islam is a divine religion, leadership after the Prophet should also be divinely-decreed. In the words of ‘Allāmah Muḥammad Riḍā Ḥakīmī, the like of *‘Abaqāt al-Anwār* cannot be found in the cultures of other nations. The book highlights the philosophy of Imamate and argues that Islam is not the faith that was reflected in the courts of caliphs, who paid only lip service to religion while thousands of Muslims remained deprived and thousands of others were subjected to a variety of oppression with ignorance and moral decadence rife in society. Islam, in fact, is the religion which bestowed honour and dignity to the human race and placed its leadership in the hands of perfect men chosen by Allah. In Islam, man is such a noble creature that it is against the traits of humanity to follow any others except the infallible ones as manifested by the Imams of the Prophet's Household.

Ḥakīmī goes on to say that the last century and a half produced such great scholars as Mir Ḥāmid Ḥusayn, Sayyid Sharfuddin al-Mūsawī and ‘Allāmah ‘Abdul Ḥusayn Amini, who

rendered valuable service to humanity by writing such immortal works as *'Abaqāt al-Anwār*, *Al-Murāja'āt* and *Al-Ghadīr* respectively, as part of efforts to enlighten minds on the principles of Imamate. They emphasized that no philosophical discussions or analogical conclusions are better than the verses of the Holy Qur'ān or the sayings and practice of Prophet Muḥammad (ﷺ) in this regard. They maintain that since all Muslims, whatever their denominations, are followers of the same book and the same Prophet, it is better to scrutinize what the Qur'ān or the *ḥadīth* have to say on the issue of continuation of leadership in Islam, rather than closing eyes to the unfortunate events that took place no sooner had the Prophet left the mortal world. Therefore, if there is any reference to the issue of Imamate in the Qur'ān and the *ḥadīth* then the controversy is over and the Muslim sects should overcome age old prejudices in order to strengthen their faith.

Impacts of the *'Abaqāt*

A close scrutiny of the contents of *'Abaqāt al-Anwār* brings to light the scholarly genius of its author as well as the multi-dimensional impacts of the book itself. Mīr Ḥamīd Ḥusayn had single mindedly prepared himself for the task and completed it with scholarly devotion. He meticulously discharged his duty by collecting, analysing and scrutinizing an enormous amount of material in a period which was without the modern facilities of travel, telecommunications and printing technology that we have at our disposal today.

On the social level the book proved that any insult to Tashayyu' and the path of the Prophet's Household was in fact an insult to the religion revealed by Allah. It showed that books such as the *Tuḥfah* are not only an attempt to ridicule the lofty concepts of Islam and the just rule of the infallible Imam, but is a support for tyrants and oppressors and the resultant ills of society that their rule breeds. In other words, giving legitimacy to a non-divine and

an unjust system is a treason against Islam and Muslims, and facilitates the conspiracies of enemies. *'Abaqāt* is thus a defense of Islamic tenets and not an attack on the beliefs of others as some might misconstrue.

On the religious front, the book, besides strengthening the foundations of faith, showed the light of guidance to others. Since religion is not the blind following of ambiguous principles or rituals, but is based on learning and intellect, it presented the gist of faith at a time when people were being unsuspectingly misled in the name of Islamic beliefs. It pointed out facts in an authoritative and irrefutable manner in the light of the Qur'ān and the *ḥadīth*.

In short, like a beacon of light *'Abaqāt* cleared away polemical mist and should remain as an indelible proof of the multi-faceted genius of its author, especially his sincerity and piety. Without strong ethical principles it is impossible to give a practical shape to beliefs, and that is what Mir Ḥamid Ḥusayn had done, by honestly and painstakingly compiling a corpus of *ḥadīth* literature to prove his sincerity of intention. He wrote profusely and when fingers of his right hand became numb and worn out due to constant writing, he held the pen in his left hand to complete his work. An example of his piety could be gauged from the fact that the author of *'Abaqāt* abstained from the industry of non-Muslims and he used only pen and paper produced by Muslims.

Ḥāmid Ḥusayn's Legacy

Although, Mir Ḥamid Ḥusayn breathed his last in 1306 A. H. at the age of 60, he left behind a lasting legacy. His equally worthy son, Sayyid Nāṣir Ḥusayn, known popularly as 'Nāṣir al-Millāh', continued his father's tradition and bequeathed to the world of learning a rich library known as *Kutub Khānah-ye Nāṣiriyyah* in his memory. It contains 30,000 books, among them some rare and unique manuscripts, and is in fact a collection of three generations

beginning with Ḥamid Ḥusayn's father, Sayyid Muḥammad Quli Kinturi.

Nāṣir Ḥusayn, who had helped his illustrious father complete the *'Abaqāt*, has himself left a valuable work titled *Nafaḥāt al-Azhār fi Faḍā'il al-A'imma al-Aṭhār* in 16 volumes. His son the late Sayyid Muḥammad Sa'id was educated in Najaf and is the author of several books including the one on Imam Mahdi ('a) titled *Al-Imam al-Thānī 'Ashar* which was printed in Najaf some years back.

Mīr Ḥamid Ḥusayn and *'Abaqāt* have thus earned lasting fame in the world of science and learning, and have inspired many a scholar to delve deep into the rich heritage of Islam and probe hitherto unexplored fields. With the technology we have at our disposal today, *'Abaqāt* should endeavour modern day researchers to sift through the exhaustive material that has gathered in the name of *ḥadīth* and help unravel facts of faith in a scientific manner.

Notes

1. Refer to Muslim and Tirmidhi in their *Ṣaḥīḥs*, Ḥākim al-Nishābūrī in his *Mustadrik al-Ṣaḥīḥayn*, Aḥmad ibn Ḥanbal in his *Musnad*, etc.
2. Shaykh Muḥammad Riḍā al-Muẓaffār, *Tarīkh al-Shī'ah*.
3. Ibn Athir, *Tarīkh al-Kāmil*, Vol. 5, p. 220.
4. 'Azizullāh 'Uṭarudī in his commentary on Āyatullāh Murtaḍā Muṭahhari's book *Khadamāt-e Mutaqābil-e Islam wa Iran*.
5. Shaykh Muḥammad Riḍā al-Muẓaffār, *Tarīkh al-Shī'ah*.
6. Ibn Baṭūṭah, *Al-Rihlah*.
7. Muḥammad Amin Nishābūrī belonged to a prominent family of Qāḍīs of Najaf, who were settled in Khorāsān by Shah Ismā'il Ṣafavī.
8. Ibn Rūzbehān had tried to disprove the merits of Imam 'Alī ibn Abi Ṭālib ('a) as mentioned in 'Allāmah Ḥilli's famous book *Nahj al-Ḥaqq wa Kashf al-Ṣidq*.
9. J.R.I. Cole, *Roots of North Indian Shī'ism in Iran and Iraq*.

10. *Ibid.*
11. Of this book, three volumes were printed in 1315 A.H. /1898 A. D. at the *Majma' al-Baḡrayn* Press, Lucknow.
12. Refer to *Ṣaḡīḡ* Tirmidhi, *Sunan* Ibn Mājah, *Musnad* Aḡmad ibn Ḥanbal, *Mustadrak al-Ṣaḡīḡayn*, etc. 'Allāmah 'Abdul Ḥusayn Aminī, who decades later wrote an exclusive 11-volume work titled *Al-Ghadīr*, says in his preface that he has extensively drawn from the material in the *'Abaqāt*.
13. Refer to *Ṣaḡīḡ* Bukhāri, *Ṣaḡīḡ* Muslim, *Ṣaḡīḡ* Tirmidhi, *Musnad* Aḡmad ibn Ḥanbal, etc.
14. Refer to *Ṣaḡīḡ* Bukhāri, *Ṣaḡīḡ* Tirmidhi, *Khaṣā'is* Nasā'i, *Musnad* Aḡmad ibn Ḥanbal, etc.
15. Refer to *Sunan* Abī Dāwūd, *Ṣaḡīḡ* Tirmidhi, *Musnad* Aḡmad ibn Ḥanbal, *Tārīkh* Ibn Athir, etc.
16. *Ṣaḡīḡ* Tirmidhi, *Ḥulyah al-Awliyā'*, *Usud al-Ghābah*, etc.
17. Muttaqī 'Alī al-Ḥindī, *Kanz al-'Ummāl*, Vol. 1, p. 226.
18. *Manāqib* ibn Maghāzali, etc.
19. Ḥākim Nishābūri, *Mustadrak al-Ṣaḡīḡayn*, Vol. 2, p. 241.
20. *Musnad* Aḡmad ibn Ḥanbal.
21. *Musnad* Aḡmad ibn Ḥanbal, etc.
22. *Firdaws al-Akḡbār*, etc.

Introduction to the Centre for Translation of the Holy Qur'ān into Foreign Languages

With the Blessings of Almighty Allah, the Endowments and Welfare Organization, as part of its activities to promote the Qur'ānic culture, established the Centre for Translation of the Holy Qur'ān into Foreign Languages in 1994 in cooperation with the Ministry of Culture and Islamic Guidance, in order to facilitate the spread of this most sacred heritage of Muslims among the nations of the world.

The main objective of the Centre is to present fluent, clear, unbiased and free of distortion translations of the Holy Qur'ān in the living languages of the world to millions of eager people who are waiting to have a proper comprehension in their own languages of the genuine teachings of Islam directly from the source of revelation itself, in a way that the contents are not coloured by sectarian polemics.

Goals and Activities

The Centre, with the Grace of Allah and the interest and cooperation shown by lovers of the Holy Qur'ān, has taken basic

steps in this very important and divinely inspired work, which are as follows:

a) Collection of Printed Translations of Holy Qur'ān

To have proper information on work under progress and in order to avoid the mistakes of others, the Centre in its quest to present a more exact translation, has started collecting printed copies of foreign language translations of the Holy Qur'ān. At present its library contains the works of 546 different translators in 78 languages with the number of copies totalling 1,700.

b) Information Bank of Articles and Critical Assessment of Translations of Holy Qur'ān

Without doubt one of the important steps in this regard is to keep information on views and critical opinions on translations of the Holy Qur'ān appearing in the Iranian and foreign publications, and so far over 500 such articles in the English, German, Italian, Arabic, Persian, Urdu, Turkish, Azeri, Arabic and Chinese languages have been collected and catalogued by the Centre.

c) Reference Library

In addition to the translations of the Holy Qur'ān, a reference library containing 2000 books at present, has been set up. It contains such works as lexicons, encyclopedias, bibliographical lists and catalogues as well as history and geography of different world countries in 30 languages which are as follows:

Persian, Arabic, English, Germany, Esperanto, Azeri, Italian, French, Turkish, Russian, Latin, Bulgarian, Spanish, Swedish, Urdu, Albanian, Portuguese, Romanian, Japanese, Pashtu, Kurdish, Armenian, Malayalam, Telugu, Bengali, Hindi, Tamil, Marathi, Swahili and Somalian.

d) Linguists and Translators

So far over 100 linguistic experts and translators in 30 languages have been invited to cooperate with the Centre and are busy at work.

e) General Information on Translations

To keep complete information on the standards of translation, whether from the viewpoint of accuracy and authenticity or from the angle of eloquence and expression of meanings of Qur'anic verses as well as the style and editing of the text, for every copy of the Holy Qur'an an identity card has been prepared. The identity card focuses on such aspects as the background and works of the translator, the standard of translation, command and control of the translator on the original Arabic and the medium of translation, sources consulted during the translation, critical evaluation by others of the translation, opinions and viewpoints of the translator, the quality of the print and errors if any, etc.

f) Translations Under Progress

Presently the Centre is engaged in translating the Holy Book in five languages --English, French, Russian, Turkish and Azeri-- and hopefully some of these are expected to be complete by the end of the current year.

g) Project for Collective Translation of the Holy Qur'an into Persian Language

Since the policy of the Centre regarding translations is based on group work, it believes that by inviting experts in such fields as grammar, syntax, literary expression, rhetoric, eloquence, exegesis, jurisprudence, Qur'anic studies, linguistics, etc., a team should be formed so as to study Persian translations right from the beginning to our own era and to attempt a fresh translation of the Holy

Qur'ān, in order to reduce mistakes and miscomprehension to the minimum possible level.

With the Grace of the Almighty, primary work has been done in this regard and necessary steps taken, and hopefully the project would soon start.

h) *Tarjumān-e Wahy* Journal

The Centre has launched a special biannual journal titled *Tarjumān-e Wahy* (Interpreter of Revelation) to provide information on the various translations of the Holy Qur'ān and to make them accessible to everyone at the international level. It also aims to invite critical studies and evaluation of translations in the different languages in order to acquaint with the views and experiences of researchers, translators and experts in the field of translation worldwide. The first and second issues of the journal have been published.

i) Bibliography of Manuscripts of Persian Translations

As supported by historical documents, the first and foremost translation of the Holy Qur'ān was in the Persian language, which is indicative of the enthusiasm and love of the Iranians for the religion of truth called Islam and for its heavenly scripture the Qur'ān. But unfortunately, no complete statistics have ever been compiled on manuscripts of Persian translations of the Holy Qur'ān that are housed in museums and educational and cultural institutes worldwide. However, with the Blessings of Allah, this Centre has taken up the work to identify all the manuscripts of Persian translations of the Holy Qur'ān that are kept in various places around the world.

We therefore request all those who have manuscripts of Persian translations of the Holy Qur'ān in their possession or have knowledge about their whereabouts to contact this Centre so that a form for registering the particulars of the copy could be sent to

them, thereby enabling them to partake of the blessings of this divine work.

Suggestions

The magnitude and importance of this project necessitates its further strengthening under the auspices of the Holy Qur'ān, so that scholars, authorities, researches, translators, centres and institutes around the world who have made efforts in this field, could reap the benefits. Therefore, to safeguard the value of the work that has been done so far, to centralize all fragmentary research and for better results, this Centre welcomes suggestions, opinions and project schemes and is ready for any kind of cooperation.

Those who possess translations of the Holy Qur'ān in any language, both old and new prints, could participate in this divinely inspired work and help the Centre achieve its goals by endowing, donating or selling to us their copies. We hope for the day we would succeed in taking an effective step in the translation of the Holy Qur'ān through the assistance and cooperation of its lovers and make available to everyone in expressive and clear style the Book which was revealed for all mankind and is meant to be a guidance for all humanity.

List of Translations of the Holy Qur'ān in Various Languages at the Centre

Language	No. of Copies	No. of Translators
1) Albanian	3	1
2) Amharic	2	1
3) Armenian	5	2
4) Assamese	1	1
5) Azeri	15	16
6) Balti	4	1
7) Baluchi	4	1
8) Bengali	5	4

Language	No. of Copies	No. of Translators
9) Bosnian	9	3
10) Brauhi	12	3
11) Bulgarian	2	2
12) Burmese	2	2
13) Chinese	18	8
14) Czech	1	1
15) Danish	7	3
16) Dargwa	1	1
17) Dutch	8	4
18) English	300	75
19) Esperanto	5	1
20) French	97	26
21) Finnish	3	2
22) German	75	14
23) Greek	2	2
24) Gujrati	10	5
25) Hausa	8	2
26) Hindi	7	3
27) Hungarian	8	1
28) Ieranon	3	1
29) Indonesian	65	14
30) Italian	26	10
31) Japanese	9	3
32) Javanese	2	1
33) Kannada	5	2
34) Kashmiri	6	3
35) Kazakh	13	4
36) Kirghiz	1	1
37) Korean	1	1
38) Kurdish	27	8
39) Latin	1	1
40) Luganda	1	1

Language	No. of Copies	No. of Translators
41) Malagasy	1	1
42) Malay	2	2
43) Malayalam	3	3
44) Maranao	10	1
45) Marathi	16	2
46) Mende	1	1
47) Norwegian	2	1
48) Pashtu	23	9
49) Persian	239	92
50) Polish	3	3
51) Portuguese	1	1
52) Punjabi	1	1
53) Romanian	1	1
54) Russian	28	5
55) Sindhi	8	5
56) Sinhalese	3	1
57) Shona	1	1
58) Siraiki	1	1
59) Somali	3	1
60) Spanish	15	6
61) Swedish	9	5
62) Swahili	5	4
63) Syriac	2	1
64) Tagalog	1	1
65) Tamil	16	8
66) Tartar	1	1
67) Tausog	2	1
68) Telugu	10	2
69) Thai	30	3
70) Turkmen	41	3
71) Turkish	139	54
72) Uighur	1	1

Language	No. of Copies	No. of Translators
73) Urdu	323	93
74) Uzbek	3	2
75) Vietnamese	2	1
76) Yoruba	1	1
77) Zulu	2	2

Details of the Languages Listed Above with Reference to Particulars of Translations of the Holy Qur'ān *

Albanian

Country where spoken	Albania
No. of speakers	5 million
No. of Muslim speakers	4 million
No. of printed translations, (complete)	4
No. of printed translations, (portions)	3
First printed translation	H. Sharif Aḥmadi, 1992

Amharic

Country where spoken	Ethiopia
No. of speakers	15 million
No. of Muslim speakers	50 %
No. of printed translations, (complete)	2
No. of printed translations, (portions)	1
First printed translation	Sayyid Muḥammad Ṣādiq & Muḥammad Ḥabib, 1972

- * 1. The Encyclopedia of Language and Linguistics, ed. R. E. Asher, Oxford, New York: Pergamon Press, First Edition, 1994.
2. World Bibliography of Translations of the Meanings of the Holy Qur'ān, Printed Translations 1515-1980, Istanbul: Research Centre for Islamic History, Art and Culture, Prepared by Ismet Binark and Halet Eren, by Ekmeleddin Ihsanoglu, 1406/1986.

Armenian

Countries where spoken	Armenia, and Armenian minorities in Iran, Turkey and Lebanon and Syria
No. of speakers	5.6 million
No. of Muslim speakers	very few
No. of printed translations (complete)	3
No. of printed translations (portions)	1
First printed translation	Abraham Amir Chanjanz, 1910

Assamese

Countries where spoken	India, Bangladesh
No. of speakers	10 million
No. of Muslim speakers	2 million
No. of printed translations (complete)	1
No. of printed translations (portions)	1
First printed translation	Muḥammad Ṣadr 'Alī, 1970

Azeri

Countries where spoken	Azerbaijan, Iran
No. of speakers	6.8 million
No. Muslim speakers	98 %
No. of printed translations (complete)	7
No. of printed translations (portions)	Nil
First translation printed	Aḥmad Kaviānpūr, 1991

Balti

Country where spoken	Pakistan
No. of speakers	210,000
No. of Muslim speakers	210,000
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Yūsuf Ḥusaynābādi, 1995

Baluchi

Countries where spoken	Iran, Pakistan, Afghanistan, Turkmenistan
No. of speakers	5 million
No. of Muslim speakers	5 million
No. of printed translations (complete)	2
No. of printed translations (portions)	Nil
First printed translation	Ḥuḍūr-Baksh Mawlānā, 1911

Bengali

Countries where spoken	Bangladesh, India, Singapore
No. of speakers	162.07 million
No. of Muslim speakers	Almost 90 million
No. of printed translations (complete)	34
No. of printed translations (portions)	88
First printed translation	Girish Chandrasen, 1886

Bosnian

Countries where spoken	Bosnia-Herzegovina, Croatia, Serbia
No. of speakers	20 million
No. of Muslim speakers	4 million
No. of printed translations (complete)	3
No. of printed translations (portions)	6
First printed translation	Ljubibratic Mico, 1895

Brahui

Country where spoken	Pakistan (Baluchestan and Sindh Provinces)
No. of speakers	1.71 million
No. of Muslim speakers	1.71 million
No. of printed translations (complete)	3
No. of printed translations (portions)	4

First printed translation Maḥmūd ‘Umar Dinpūri, 1916

Bulgarian

Countries where spoken Bulgaria, Romania, Greece, Moldavia, Turkey

No. of speakers 9 million

No. of Muslim speakers 10%

No. of printed translations (complete) 3

No. of printed translations (portions) 1

First printed translation Stefan Tomov & Stefan Ya Skulev, 1930

Burmese

Country where spoken Myanmar (Burma)

No. of speakers 22 million

No. of Muslim speakers 2 million

No. of printed translations (complete) 2

No. of printed translations (portions) Nil

First printed translation Baseen, 1969

Chinese

Countries where spoken China, Thailand, Singapore, Taiwan, Malaysia, Vietnam

No. of speakers 1.078 billion

No. of Muslim speakers 20 million

No. of printed translations (complete) 8

No. of printed translations (portions) 6

First printed translation Tiezheng Li, 1927

Czech

Country where spoken Czech Republic

No. of speakers 12 million

No. of Muslim speakers 5,000

No. of printed translations (complete) 4

No. of printed translations (portions)	Nil
First printed translation	Eignak Wesley, 1925

Danish

Countries where spoken	Denmark, Germany, Greenland
No. of speakers	5.28 million
No. of Muslim speakers	90,000
No. of printed translations (complete)	3
No. of printed translations (portions)	1
First printed translation	Pedersen, 1919

Dargwa

Country where spoken	Daghestan Republic (Russia)
No. of speakers	287,000
No. of Muslim speakers	280,000
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Ḥamid Muṣṭfā luivic, 1995

Dutch

Countries where spoken	The Netherlands, Belgium, Surinam, . Netherland Antilles
No. of speakers	15-20 million
No. of Muslim speakers	300,000
No. of printed translations (complete)	9
No. of printed translations (portions)	1
First printed translation	Salomon Schweigger, 1641

English

Countries where spoken	U.K., U.S.A., Canada, Australia, South Africa, New Zealand, 60 other countries
No. of speakers	450 million
No. of Muslim speakers	10 million

No. of printed translations (complete)	40
No. of printed translations (portions)	92
First printed translation	Alexander Ross, 1648

Esperanto

Country where spoken	supposed to be an international language
No. of speakers	Figures not available
No. of Muslim speakers	Figures not available
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Italo Chuissi, 1969

French

Countries where spoken	France, Canada, Northeastern and Central African countries
No. of speakers	122 million
No. of Muslim speakers	12 million
No. of printed translations (complete)	24
No. of printed translations (portions)	20
First printed translation	Andre Du Ryer, 1647

Finnish

Countries where spoken	Finland, Sweden, Russia, Norway, Estonia
No. of speakers	6 million
No. of Muslim speakers	4,000
No. of printed translations (complete)	2
No. of printed translations (portions)	Nil
First printed translation	Ahsen Boere, 1942

German

Countries where spoken	Germany, Austria, Switzerland
No. of speakers	118 million

No. of Muslim speakers	2 million
No. of printed translations (complete)	17
No. of printed translations (portions)	23
First printed translations	Salomon Schweigger, 1616

Greek

Countries where spoken	Greece, Cyprus, and minorities in Bulgaria, Albania, Turkey, Italy, Romania, Russia
No. of speakers	12 million
No. of Muslim speakers	2,000
No. of printed translations (complete)	6
No. of printed translations (portions)	1
First printed translation	Anonymous, 1743

Gurjrati

Countries where spoken	India and Gujrati communities in Pakistan, East Africa (Tanzania) & Southern Africa including Madagascar
No. of speakers	39 million
No. of Muslim speakers	7 million
No. of printed translations (complete)	12
No. of printed translations (portions)	2
First printed translation	'Abdul-Qādir bin Luqmān, 1879

Hausa

Countries where spoken	Nigeria, Liberia, Ghana, Burkina Faso, Niger, Chad, Togo and parts of Southern Sudan
No. of speakers	22 million
No. of Muslim speakers	Over 10 million
No. of printed translations (complete)	2
No. of printed translations (portions)	3

First printed translation	Abū Bakr Maḥmūd Qummi, 1979
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Hindi

Country where spoken	India
No. of speakers	50 to 200 million
No. of Muslim speakers	30 million
No. of printed translations (complete)	7
No. of printed translations (portions)	3
First printed translation	Aḥmad Shah Masiḥi, 1915

Hungarian

Countries where spoken	Hungary, Romania, Austria, Ukraine
No. of speakers	14.5 million
No. of Muslim speakers	5,000
No. of printed translations (complete)	3
No. of printed translations (portions)	2
First printed translation	Imre BuzidaySzdmujer, 1831

Ieranon

Country where spoken	Philippines
No. of speakers	5 million
No. of Muslim speakers	4 million
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	'Abdul-'Aziz Baghel

Indonesia

Country where spoken	Indonesia
No. of speakers	35 million
No. of Muslim speakers	Over 95%
No. of printed translations (complete)	17
No. of printed translations (portions)	21

First printed translation Aḡmad Ḥasan, 1928

Italian

Countries where spoken Italy, Monaco, San Marino,
Switzerland

No. of speakers 40 million

No. of Muslim speakers 250,000

No. of printed translations (complete) 11

No. of printed translations (portions) 5

First printed translation Andrea Arrivabene, 1547

Japanese

Countries where spoken Japan, Taiwan, Singapore,
Thailand

No. of speakers 126 million

No. of Muslim speakers 200,000

No. of printed translations (complete) 6

No. of printed translations (portions) Nil

First printed translation Ken-ichi Sakamoto

Javanese

Countries where spoken Indonesia (Java), Malaysia,
Singapore

No. of speakers 75.6 million

No. of Muslim speakers 95%

No. of printed translations (complete) 1

No. of printed translations (portions) 4

First printed translation Kiyai Bishri, 1967

Kannada

Country where spoken India (Karnatak State)

No. of speakers 27 million

No. of Muslim speakers 3 to 5 million

No. of printed translations (complete) 2

No. of printed translations (portions)	Nil
First printed translation	Group of translators, 1978

Kashmiri

Countries where spoken	Kashmir (India and Pakistan)
No. of speakers	Over 10 million
No. of Muslim speakers	7 to 8 million
No. of printed translations (complete)	2
No. of printed translations (portions)	3
First printed translation	Mawlānā Muḥammad Yūsuf Kashmiri, 1993

Kazakh

Countries where spoken	Kazakhstan, China, Afghanistan, Iran
No. of speakers	8 million
No. of Muslim speakers	8 million
No. of printed translations (complete)	4
No. of printed translations (portions)	25
First printed translation	Kawnikubā, 1990

Kirghiz

Countries where spoken	Kirghizstan, China, Afghanistan, Turkey
No. of speakers	2.05 million
No. of Muslim speakers	2.05 million
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Ersin Torsonov, 1991

Korean

Countries where spoken	North Korea, South Korea, China, Japan Singapore, Thailand
No. of speakers	72 million

No. of Muslim speakers	a small minority (figures not available)
No. of printed translations (complete)	2
No. of printed translations (portions)	Nil
First printed translation	Yung Sun Kim, 1970

Kurdish

Countries where spoken	Iran, Iraq, Turkey, Syria
No. of speakers	4.04 million
No. of Muslim speakers	4.04 million
No. of printed translations (complete)	5
No. of printed translations (portions)	3
First printed translation	Muḡammadi Golizādeh, 1970

Latin

Countries where spoken	Italy
No. of speakers	figures not available
No. of Muslim speakers	Nil
No. of printed translations (complete)	2
No. of printed translations (portions)	25
First printed translation	Robertos Katnansis, 1543

Luganda

Countries where spoken	Nigeria, Congo, Uganda, Tanzania
No. of speakers	3 million
No. of Muslim speakers	1.8 million
No. of printed translations (complete)	2
No. of printed translations (portions)	Nil-
First printed translation	Zakariā Kizito Bludda, 1973

Malagasy

Countries where spoken	Madagascar, Comorro Islands
No. of speakers	12 million

No. of Muslim speakers	4 million
No. of printed translations (complete)	Nil
No. of printed translations (portions)	1
First printed translation	Anonymous, 1995

Malay

Countries where spoken	Malaysia, Indonesia, Singapore, Brunei, Thailand
No. of speakers	17.53 million
No. of Muslim speakers	90%
No. of printed translations (complete)	6
No. of printed translations (portions)	32
First printed translation	Abdur-Raouf bin Shaykh 'Ali Fansouri, 1923

Malayalam

Countries where spoken	India, Fiji, Singapore
No. of speakers	34 million
No. of Muslim speakers	5 million
No. of printed translations (complete)	4
No. of printed translations (portions)	2
First printed translation	Monstrel Kayakutti, 1970

Maranao

Countries where spoken	Philippines
No. of speakers	603,000
No. of Muslim speakers	603,000
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Collective translation, 1968

Marathi

Countries where spoken	India
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No. of speakers	65 million
No. of Muslim speakers	8 million
No. of printed translations (complete)	3
No. of printed translations (portions)	1
First printed translation	Muḡammad Ya'qub Khan, 1973

Mende

Countries where spoken	Liberia, Sierra Leone
No. of speakers	1.26 million
No. of Muslim speakers	300,000
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Ala Buyahuptik, 1990

Norwegian

Countries where spoken	Norway
No. of speakers	5 million
No. of Muslim speakers	15,000
No. of printed translations (complete)	1
No. of printed translations (portions)	1
First printed translation	Inar Bereg, 1950

Pashtu

Countries where spoken	Afghanistan, Pakistan
No. of speakers	8.05 million
No. of Muslim speakers	8.05 million
No. of printed translations (complete)	12
No. of printed translations (portions)	23
First printed translation	Anonymous, 1861

Persian

Countries where spoken	Iran, Tajikistan, Afghanistan, Iraq, Bahrain, Qatar
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No. of speakers	35 million
No. of Muslim speakers	33.5 million
No. of printed translations (complete)	67
No. of printed translations (portions)	75
First printed translation	Kamāluddīn Ḥusayn bin 'Alī Wā'iz Kashifī, 1837

Polish

Countries where spoken	Poland
No. of speakers	40 million
No. of Muslim speakers	25,000
No. of printed translations (complete)	3
No. of printed translations (portions)	5
First printed translation	Bostaki, 1858

Portuguese

Countries where spoken	Portugal, Brazil, Angola, Guinea- Bissau
No. of speakers	175 million
No. of Muslim speakers	300,000
No. of printed translations (complete)	5
No. of printed translations (portions)	3
First printed translation	Anonymous, 1882

Punjabi

Countries where spoken	Pakistan, India, Singapore
No. of speakers	Over 20 million
No. of Muslim speakers	50%
No. of printed translations (complete)	15
No. of printed translations (portions)	37
First printed translation	Ḥāfīz Mubārakullāh, 1870

Romanian

Countries where spoken	Romania, Moldavia, Greece, Bulgaria, Yugoslavia
No. of speakers	25 million
No. of Muslim speakers	80,000
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Solostro Octavian Eisripskol, 1912

Russian

Countries where spoken	Russia, Former Soviet Republics, China
No. of speakers	160 million
No. of Muslim speakers	25 million
No. of printed translations (complete)	12
No. of printed translations (portions)	1
First printed translation	Puetro Asilovic Postanikov, 1716

Sindhi

Countries where spoken	Pakistan, India, Singapore
No. of speakers	17 million
No. of Muslim speakers	80%
No. of printed translations (complete)	15
No. of printed translations (portions)	2
First printed translation	Muhammad Siddiq, 1868

Sinhalese

Countries where spoken	Sri Lanka
No. of speakers	12 million
No. of Muslim speakers	1 million
No. of printed translations (complete)	1
No. of printed translations (portions)	2
First printed translation	Vikramasinghe -

Shona

Countries where spoken	Zimbabwe, Mozambique, Zambia
No. of speakers	7 million
No. of Muslim speakers	200,000
No. of printed translations (complete)	Nil
No. of printed translations (portions)	1
First printed translation	Details not available

Siraiki

Countries where spoken	Pakistan, India
No. of speakers	15 million
No. of Muslim speakers	15 million
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Mehr 'Abdul-Haq 1983

Somali

Countries where spoken	Somalia, Ethiopia, Kenya
No. of speakers	7 million
No. of Muslim speakers	90%
No. of printed translations (complete)	1
No. of printed translations (portions)	2
First printed translation	Shaykh Muḥammad 'Abduh, 1912

Spanish

Countries where spoken	Spain, Cuba, Mexico, U.S., Central and South American countries and parts of Africa
No. of speakers	266 million
No. of Muslim speakers	300,000
No. of printed translations (complete)	16
No. of printed translations (portions)	6
First printed translation	Jose Garbordi Roblus, 1844

Swedish

Countries where spoken	Sweden, Finland, Estonia
No. of speakers	9 million
No. of Muslim speakers	40,000
No. of printed translations (complete)	5
No. of printed translations (portions)	Nil
First printed translation	Fredrik Crusnostolpe, 1843

Swahili

Countries where spoken	Tanzania, Kenya, Uganda, Mozambique, Somalia
No. of speakers	5 million
No. of Muslim speakers	3 million
No. of printed translations (complete)	3
No. of printed translations (portions)	2
First printed translation	Godfrey Dale, 1923

Syriac

Countries where spoken	Iran, Iraq, Turkey
No. of speakers	50,000
No. of Muslim speakers	Nil
No. of printed translations (complete)	Nil
No. of printed translations (portions)	1
First printed translation	Details not available

Tagalog

Countries where spoken	Philippines
No. of speakers	10.5 million
No. of Muslim speakers	10.5 million
No. of printed translations (complete)	Nil
No. of printed translations (portions)	1
First printed translation	Details not available

Tamil

Countries where spoken	India, Sri Lanka, Malaysia, Singapore, Thailand, South Africa
No. of speakers	48 million
No. of Muslim speakers	6 million
No. of printed translations (complete)	1
No. of printed translations (portions)	3
First printed translation	Ḥabīb Muḥammad al-Qāhiri, 1884

Tartar

Countries where spoken	Tartaristan (Russian Federation), Russia, Afghanistan, China
No. of speakers	7 million
No. of Muslim speakers	7 million
No. of printed translations (complete)	Figures not available
No. of printed translations (portions)	Figures not available
First printed translation	Nūrullāh Ḥaḍrat 'Alī Naqī, 1996

Tausog

Countries where spoken	Philippines, Indonesia, Malaysia
No. of speakers	492,000
No. of Muslim speakers	90%
No. of printed translations (complete)	Nil
No. of printed translations (portions)	1
First printed translation	Details not available

Telugu

Countries where spoken	India, Singapore
No. of speakers	55 million
No. of Muslim speakers	15%
No. of printed translations (complete)	5
No. of printed translations (portions)	6
First printed translation	Chelkouri Narayana Rao, 1938

Thai

Countries where spoken	Thailand, China, Vietnam, Laos, Singapore
No. of speakers	20 million
No. of Muslim speakers	2 million
No. of printed translations (complete)	5
No. of printed translations (portions)	Nil
First printed translation	Ismail bin Yahya, 1969

Turkmen

Countries where spoken	Turkmenistan, Iran, Afghanistan, Turkey
No. of speakers	3.2 million
No. of Muslim speakers	3.2 million
No. of printed translations (complete)	1
No. of printed translations (portions)	Nil
First printed translation	Shaykh Muḥammad Akhūnd Eishanin, 1990

Turkish

Countries where spoken	Turkey, Cyprus, Bulgaria, Greece
No. of speakers	56 million
No. of Muslim speakers	95%
No. of printed translations (complete)	65
No. of printed translations (portions)	128
First printed translation	Muḥammad Tafsiri Eintabi Dabbagh- Zadeh, 1842

Uighur

Countries where spoken	China (Sinkiang Province), Uzbekistan
No. of speakers	7.5 million
No. of Muslim speakers	7.5 million
No. of printed translations (complete)	1

No. of printed translations (portions)	Nil
First printed translation	Shaykh Muḥammad bin Ṣālih, 1993

Urdu

Countries where spoken	India, Pakistan,
No. of speakers	150 million
No. of Muslim speakers	Over 100 million
No. of printed translations (complete)	174
No. of printed translations (portions)	470
First printed translation	Shah 'Abdul-Qadir Dehlavi - 1829

Uzbek

Countries where spoken	Uzbekistan, China
No. of speakers	15 million
No. of Muslim speakers	15 million
No. of printed translations (complete)	2
No. of printed translations (portions)	Nil
First printed translation	Muḥammad bin Sayyid Nazeer al-Ṭarāzi - 1955

Vietnamese

Countries where spoken	Vietnam, Kampuchea, Laos
No. of speakers	59 million
No. of Muslim speakers	1 million
No. of printed translations (complete)	Nil
No. of printed translations (portions)	1
First printed translation	Tu Kong Su - 1993

Yoruba

Countries where spoken	Nigeria, Benin, Togo
No. of speakers	20 million
No. of Muslim speakers	10 million
No. of printed translations (complete)	2

No. of printed translations (portions)	1
First printed translation	M. S. Kaul - 1906

Zulu

Countries where spoken	South Africa, Lesotho, Malawi, Mozambique, Swaziland
No. of speakers	8.8 million
No. of Muslim speakers	150,000
No. of printed translations (complete)	1
No. of printed translations (portions)	1
First printed translation	Mawlānā S. M. Seema - 1982

THE SECOND MEETING OF GENERAL ASSEMBLY OF THE *AHL AL-BAYT* ('a) WORLD ASSEMBLY

In February of 1998 the Islamic Culture and Communications Organization was host to the Second Meeting of the *Ahl al-Bayt* World Assembly, in which representatives from various nations participated. The aim of the *Ahl al-Bayt* ('a) World Assembly is to pursue understanding and communication and to promote the edification of Islam and Tashayyu' and unity among all Muslims. What has made the birth of this Assembly inevitable is the concern demonstrated by the Islamic Republic of Iran to engage in a serious and active effort to rid the Tashayyu' of embellishments and additions that do not truly belong to it but have been added to both its belief system and practices. The aim of the scholars participating in this conference is to examine the origins of these embellishments, the ways in which they enter the religion and the consequences of this penetration.

Before the inauguration of the conference, the participants had an audience with the leader of the Revolution, who said: "It is a divine blessing for the Muslim brothers to gather around the

topics they all share and agree upon. For if such purpose is attained by a collective body, it should be regarded as a blessing bestowed by God, and we should be thankful for it." In another part of his speech he said: "The gathering together of those who believe in the Shi'ite creed is not meant as an act in opposition to other Muslims, is not meant to divide and produce schism between followers of different schools and sects; its only objective is to protect all those who believe in and follow the *Ahl al-Bayt*." In another section he added: "All through the history of Islam there have been individuals who have invented narrations and interpretations of Qur'anic verses so as to please the rulers of the day. The Imams ('a) resisted and opposed such efforts. Anyone who opposes distortion of the faith and its being abused and exploited in the service of the interests of this or that ruler will be subject to injustice and oppression; this is inherent to this belief and school of thought. Nothing can be done about it; one cannot cease one's struggle just to avoid such animosity."

In conclusion, Āyatullah Khamene'i stated: "It is only to discharge its duty and obligation and to pursue its luminous path that the Iranian acts, fights devils and resists their desires. The greatest struggle against Arrogance is for one not to surrender to its will. Today the Iranian nation is engaged in this great fight, and this is a path opened before us by our great Imam. The Iranian people set foot upon this path, struggled, and thank God, attained honor. Today the nation is still resolutely treading this very same path. And we have offered many martyrs upon this path; many worthy, dear individuals have been sacrificed in the course of this struggle. However, the Iranian nation believes that it is in the pursuit of this path that its honor and glory lie. God-willing, it shall maintain its course, and victory, as has been divinely promised, belongs to those who fight and struggle in His path."

The leader of the Revolution also stressed the fact that we should not surrender to enemies, especially to those who have tried to harm the devotees of the *Ahl al-Bayt* by pretending to be one of

them, and to hide their evil plans under the cloak of the Qur'ān and the teachings and beliefs of the Shi'ah. For the history of Islam shows that the greatest threats against Islam and the Shi'ites have always been posed by those who have been familiar with the faith and have exploited it only as a means of enriching themselves and furthering their selfish interests.

In a meeting with the conference participants, Ḥujjatulislām Sayyid Muḥammad Khātami, the president of the Islamic Republic of Iran, pointed out four central principles in the Shi'ite belief system. These principles are: belief in reason and justice, search for truth, and the struggle to attain a decent and good life. Concerning the Shi'ite concern with the above-mentioned principles he said:

Notwithstanding the differences already mentioned, the Shi'ite faith represents a particular human culture that can serve as a pattern for those who seek a life of felicity and honor for mankind. One of the most prominent cultural characteristics of the Shi'ite faith, that has historically manifested itself in the realms of both theory and practice, has been its preoccupation with the pursuit of justice....

Every human being possesses reason and uses it. The Shi'ites too, employ their intellects in an attempt to understand the universal order. Fārābī is the founder of the Shi'ite Islamic philosophy, brought Aristotelian philosophy to its zenith in the realm of political thought. Ibn Sinā, Shaykh Shihāb al-Dīn Suhrawardi and Ṣadr al-Muta'allihin were all Shi'ites. Moreover, the most important philosophical commentators in Islam were also Shi'ites, and the greatest of them was Khwajah Naṣir al-Dīn. This does not mean that followers of other sects have not had a role in the process of the development of Islamic thought. It indicates the fact, however, that rationalism has enjoyed a fertile ground among the Shi'ites....

It is correctly observed today that the most significant characteristics of the modern world, as far as human affairs are concerned, is that it considers man to have rights, while in the past man's duties and obligations were stressed. What we are referring to here are rights that have a metaphysical and supernatural origin. That man has rights is shown by the fact that we find Imam 'Ali ('a) speaking of the rights and prerogatives of the ruler over his subjects and those of the subjects over the ruler. In Islamic government people have rights, and consequently, rulers are responsible before God...

This revolution owes its victory to the words, presence, will and desire of the people; it does not rely on the sword. Our system of government is one in which Shi'ite thought plays a central role. Its aim is to provide a good and satisfying life for all; it is not sectarian.

The stress laid by the leader of the Islamic Revolution and the president of the Islamic Republic of Iran on values contained in Shi'ite culture and its political, cultural and economic origins illustrates the ability of this school of thought to formulate those objectives that the modern world, by covering them with the trappings of knowledge derived from science, is trying to present as modern accomplishments. In other words, intellectual development, criticism and innovation, careful evaluation and examination of concepts in Shi'ite culture, coupled with reliance on unbroken experience of the thinkers of the past, gives rise to the hope that knowledge of the thoughts and experiences of others, appreciation of constructive ideas, even of those with which Muslim thinkers are not usually concerned, and finally ideas and concepts to be found in other revealed faiths, can all be of substantial help in strengthening the concept of Islamic

government, of which the Islamic Republic is the practical manifestation.

Moreover, this gathering also serves to call the attention of the enemies of Islam to the unshakable belief of the Shi'ites in the ability of this school of thought to forge and develop man's character, and consequently, contribute to the formation of the new and emerging human civilization.

Annual Index

Volume 3 (Spring 1996-Winter 1998)

Authors and titles

Articles:

As'adi, Murtaḍā,

From Revival to Reform, 3.3 (Autumn 1997): 71-78.

Ershadul Bārī, M.,

Teachings of 'Āshūrā and Their Application in the Islamic Revolution in Iran, 3. 1&2 (Spring & Summer 1997): 103-113.

Fāḍil, Muḥammad Taqī,

The Concept of Religious Reason, 3.4 (Winter 1998): 109-133.

Falātūri, 'Abd al-Jawād,

The Study of the Creed and Sciences of the Shi'ah, 3.3 Autumn 1997): 59-70.

Ḥakīmī, Muḥammad Riḍā,

400 Sources on Shi'ah, 3. 1&2 (Spring & Summer 1997): 115-196.

Ibrāhīmī Dīnāni, Ghulām Ḥusayn,

The Names and Attributes of God, 3.3 (Autumn 1997): 121-140

Irving, T. B.,

Islam in Spain, 3.1&2 (Spring & Summer 1997):93-102.

Khorramshāhī, Bahā' al-Dīn,

Is the *Ta'wil* of the Qur'ān Known only to god?, 3.3 (Autumn. 1997): 9-23.

Lārijāni, Muḥammad Jawād,

The New Civilization Based on Islamic Rationality, 3.3 (Autumn 1997): 105 119.

- Legenhausen, Muḥammad,
The Philosophy of Prophet Ādam ('a), 3.4 (Winter 1998): 87-107.
- Ma'rifat, Muḥammad Hādi,
Concept of *Kitāb* in the Qur'ān, 3.1&2 (Spring & Summer 1997):
41-49.
- Mehrīzi, Muḥammad Mahdi,
Fiqh and Time; A Historical Glance, 3.4 (Winter 1998): 33-59.
- Muḥaqqiq Dāmād, Muṣṭafā,
Human Rights in the West and Islam, 3.3 (Autumn 1997): 81-103.
- Muṭahhari, Murtaḍā,
Al-Ghadir and Its Relevance to Islamic Unity, 3.1&2 (Spring &
Summer 1997): 51-61.
- Qābil, Hādi,
A Comparative Study of Three Accounts in the Qur'ān and the
Turāh, 3.1&2 (Spring & Summer 1997): 9-22.
- Saeedi Rowshan, Muḥammad Bāqir,
Revelation in the Qur'ān, 3.1&2 (Spring & Summer 1997): 23-40.
- Subḥāni, Muḥammad Taqī,
Rationalism and Literalism in Islamic Theology, 3.3 (Autumn
1997):25-58.
- Shahīdī , 'Abd al-Ḥusayn,
The *Tafsīr* of Mujāhid: The Earliest of Qur'ānic Commentaries, 3.4
(Winter 1998): 9-31.
- Taskhiri, Muḥammad 'Ali,
The Analysis on Development of the Concept of Human Rights,
3.4 (Winter 1998): 61-74.

Tork Zahrani, Muṣṭafā,
Islam and the West, 3.1&2 (Spring & Summer 1997): 79-92.

Ura'ee, Ghulām Riḍā,
Science of Jurisprudence and Verstehen Sociology, 3.1&2 (Spring
& Summer 1997): 63-77.

Zaki, Ya'qūb,
The Uniqueness of the Islamic Revolution; a Study in Political
Contrasts, 3.4 (Winter 1998): 75-85.

Report:

A Glance at the Centre for Strategic Research, 3. 3 (Autumn 1997):
141-156.

A Report on the Inter-Faith Conference on Justice in International
Relations, 3.1&2 (Spring & Summer 1997): 221-230.

International Conference:
Imam Khumayni and Revival of Religious Thought, 3.4 (Winter
1998): 135-143.

Book Review:

Islāmi Ḥasan,
Philosophy of Religious Thought in Islam and Christianity, 3.4
(Winter 1998): 145-160.

Subḥāni, Muḥammad Taqī,
Contemporary Orientalists on Mysticism, 3. 1&2 (Spring &
Summer 1997):197-219.