



Documents

Religious Government and Human Rights (*Hokūmat-e dīnī va hoqūq-e ensān*)

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Inherent Rights and Traditional *feqh*. The Basis of Inherent Rights and their Relationship with the Principle of Avoidance (*aṣālat al-ḥazr*)

16th question: His Eminence has referred to basic and fundamental rights in his *Treatise on Rights* which are “not the result of necessities and particular social circumstances or conditions of time and place”. Furthermore, “inherent rights take precedent over anything else and are thus confirmed in and of themselves. They are inalienable and innate. Every human is to enjoy these rights simply because he is human and due to human dignity. Such rights are not rooted in legislation or the will of the government, but in the natural condition and are to be considered axioms of practical reason. The perspective of the religious law is to guide it.” (*Resāle-ye hoqūq*, 4th printing, p. 15).

First: Would the adoption of these positions not require a revision of the traditional approach to Islamic law (*feqh*)?

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Second: On what criteria is the identification of this group of rights based? If we encounter stipulations in the religious texts contradicting these, which position does take precedence?

Third: His Eminence, in contrast to famous principalists (*oṣūliyyūn*) and religious jurists (*foqahā'*), does not accept the principle of rational exemption (*barā'at-e 'aqlī*) [from an obligation in the case of doubt]. Yet, you advocate in a rational way the principle of avoidance (*aṣālat al-ḥaẓr*). How can Your Eminence's position be combined with the aforementioned?

Answer:

First: Islamic jurisprudence was put together on the basis of the questions, needs, and circumstances of various time periods. The great *foqahā'* extracted their rulings from Qur'ānic verses and traditions. Today most of these questions and needs have undergone change. Hence, by applying the same method of traditional independent legal reasoning (*eḡtehād*) and the reliance on verses and reports, we have to bring about change and new research in two areas:

1. New research into the roots and principles of *feqh*.

Today new needs and questions arise which did not present themselves in the past. If the roots and principles [of Islamic jurisprudence] are put to reexamination, and those rulings which don't deal with Islamic worship and whose beneficial and corruptive influences are obvious are examined in terms of the criteria upon which they were brought into existence and the method by which they were unveiled [by previous jurists], utilizing religious texts and the biographies (*sīra*) of the Household of the Prophet (*ma'ṣūmīn*), as well as in consideration of the conditions of time and place of their issuing, new insights and rulings can surely be reached which will answer to the present-day needs of the Islamic society.

2. The chapters of *feqh* should be rearranged and new ones inserted on the basis of new inferences which, relying on Islamic teachings, can anticipate and cover all aspects of questions regarding laws and freedoms of society. This means issues that did not arise in this form in the past, like workers' rights, political parties and other organizations, the media, etc.

Second: Apparently the criteria and characteristics of fundamental and inherent rights transcend time and space and are established and persistent under all conditions and in various societies, for all their different cultures, religions, customs, and traditions. Such rights did not originate in a specific geographical location or a particular time period. They rather stem from inherent human purposes (*maṣāleḥ-e zātī-ye ensānhā*). Only the human's humanity validates them. Naturally justice will be secured if such rights are recognized and humans enjoy them.

Religious texts which aim at guiding humanity and fostering justice are also not at all in contradiction with these rights which stem from human nature and rely on the humanity of a human being. Yet, the possibility exists that some texts of invalid transmission or some interpretations of certain valid and decisive texts might contradict such rights. In these cases, the principles take precedence over the branches of the law. If also [those texts] are subjected to a comparison (*meqyās*) with the clear, unambiguous verses of the Qur'ān (*mohkamāt*), the *sunna* and reason, the truth will be reached.

Third: Being a proponent of the principle of avoidance (*aṣālat al-ḥazr*) is not incompatible with basic rights which are related to the inherent human dignity. For according to the godly worldview, the origin of all beings, including human beings and their inherent and inalienable rights, is God Most High. Qur'ānic verses and traditions, which are indicated in the *Treatise on Rights (Resāle-ye hoqūq)*, can be used to demonstrate that God Most High considers humans as such to possess rights regardless of their beliefs (*aqīda*) or ideas. For example, the noble verse "Indeed we have bestowed dignity upon the children of Adam" (Q17:70) and similar verses and traditions all refer to this.

The principle of avoidance is tied to a period of time before rights were bestowed by God to His servants. Therefore if God would have not bestowed this inherent dignity and honor on humans, deriving laws from it [i.e., dignity] would not have been valid.

The Equality of Humans in their Inherent Rights and the Reason for their Differing Treatment Regarding Certain Legal Rulings

17th question: Taking into consideration the previous question, it is requested that you clarify your position on the International Declaration of Human Rights and its articles on which there is general agreement among sensible persons (*'oqalā'*) in the present age:

1) If all human beings are respected and endowed with rights due to their humanity, does this mean that all human individuals are equal in their enjoyment of their human rights, including civil rights, punishments, trade or even taking up various occupations? Or does their particular religion and school (*mazhab*) play a role in this matter and either necessitate their enjoying this category of rights or exclusion therefrom?

2) Do men and women enjoy equal human rights? If this is the case, how can one explain the special privileges of men in the fields of marriage, divorce, raising children (*ḥežānat*), testifying, serving as judges, guardianship, blood-money, inheritance, etc.?

3) If in this world human beings—irrespective of any obligation (*taklīf*)—are free in their choice of religion and belief, in expressing it, changing it, acting in accordance with it, or abandoning religious activity [altogether], how do we evaluate the legal rulings concerning an apostate (*murtadd*) which apply regardless of the inherent human nature or national laws with all the dilemmas (*šoqūq*) this might bring about? Likewise, why do in some stipulations those who neglect religious obligations become an object of discretionary punishment (*ta'zīr*)?

Answer:

1) A human being is respected and enjoys rights due to his humanity. All individuals are equal in their enjoyment of human rights, be they public rights, civil rights, laws pertaining to punishment or trade. This means that they can make use of their right to exert themselves and gain public offices. But it has to be stated that the fixed underlying principle regulating the striving for a public office is that one has to be qualified for the position and that the majority of the people accept one for this office. Moreover, Islam reminds the Muslims that non-Muslims are not allowed to rule over them: “God will never grant the

unbelievers any way over the believers” (Q4:141). It is likewise commanded: Do not take someone who does not believe in God, the Prophet, and the resurrection as a friend or master. Similarly, the believers have been instructed not to give someone who is either immoral (*fāseq va fāḡer*), a criminal or an unjust person sensitive work or responsibility. Based on this, there can be no religious legitimacy for non-Muslims in a Muslim-majority society to hold such offices which would grant them power over Muslims. This would of course also go against the wish and right of the majority in such a society. There is no society in which an individual or a group would have the right to disregard the demands of the majority. The same applies to someone who is not morally fit or lacks knowledge or strength to administer a society, and this does not violate human rights. If a person subscribes neither to a specific belief (*mazhab*) nor to religion, this constitutes from the perspective of pious members of society a sort of deficiency in the requirements. A person who is identified by the majority of society as being deficient in such a way has no right to rule over them. Human rights confirm that a person who is deficient in the requirements should not run for an influential office or become elected to it. It is obvious [, however,] that according to this there is no objection under the *šari‘a* to occupying a position which is not a key one and does not entail the exertion of power by non-Muslims over Muslims.

2) Men and women are equal in their enjoyment of human and inherent rights but certain points should be noted:

a) Usually each right involves two parties. If someone has a right over somebody, the latter also has a claim with respect to the former. Every right is a binding obligation for one party under the supervision of the other party. For example, if a man has a claim over his wife, she also has a reciprocal claim over her husband and each claim is an obligation binding upon the other party. Of similar character are the mutual rights of father, mother, and children as well as those of the government and the people.

The only case in which we can require and accept a right without an obligation is when we think about God Most High. He has claims over His servants but is not bound reciprocally to carry out any action. Even though He, out of His boundless benevolence and mercy, constantly

extends His grace and mercy onto His servants, He makes it clear that He Himself has made this obligatory upon Himself: “Your Lord has prescribed for Himself mercy” (Q6:54).

b) Every right and obligation for men and women must be grounded in justice. Justice, however, does not mean the equality of woman and man in all areas. Rather, it means that to every person is given what he deserves and that his obligations are determined according to his abilities. It is evident that men and women differ in their existential structure (*sāhtār-e woğūd*). They also each have different bodily and mental features and vary in their nature and their needs. All rights and obligations which are specified in legislation must be in accordance with their respective ability, power and needs, otherwise they would be wronged. This difference has nothing to do with human dignity or appreciation so that one might say that the consequence of this difference is that one of the two must be more worthy than the other. Rather, the idea is that obligations and rights must correspond to the inherent nature of human beings, in addition to their skills, abilities and needs. Justice in this sense demands that strenuous obligations and difficult responsibilities are not placed upon a woman, who is a delicate and tender human being, or, according to His Holiness the Commander [of the Faithful ‘Alī b. Abī Ṭālib] a “fragrant flower”.¹ In reality, this is the Lawgiver’s benevolence and clemency to women, not disrespect, lack of worth or His privileging of man. Some of the issues mentioned in the question belong to this category, like guardianship or judgeship. Participating in *ğehād* would be similar.

On the other hand, guardians or judges are usually required to be present among men, mingle with them, deliberate with them and sometimes witness fights and enmity between the two parties of a dispute. This is naturally all irreconcilable with the requirements of veiling, keeping women away from non-relatives (*nāmahram*), and her softness of spirit. Clearly a woman, especially when she is young, is more likely to be subject to the desires of others and of trouble-makers (*fetne garān*) and to cause trouble [herself, too]. For this reason, the Lawgiver relieved

¹⁾ “Verily, the woman is a fragrant flower and not a housekeeper (*bi-qahramāna*).” *Nahğ al-balāğā* (ed. Şubhī Şālih), letter 31.

women of such work and positions, not to humiliate her, but because veiling and protecting her in such a position would be extremely strenuous and difficult.

c) Similarly, the structural difference in self-control and affection between men and women is undeniable. Usually women display more emotions than men. This does of course not imply that she is less worthy in her humanity or her spiritual perfection. Rather, it necessitates that women be put in charge of affairs which require much affection, like raising children and educating them as well as household work. Women are banned, however, from affairs like divorce, giving testimony, *ḡehād*, guardianship and judgeship in which strong affections and feelings and the possibility to be overcome by them could cause harm and negative consequences. There is a danger that someone might fall under the influence of his own emotions in such matters and this would have undesirable consequences for the women themselves as well as society.

Yet, it must be emphasized that women do not entirely lack rights in giving testimony or as far as divorce is concerned. A wife has the right to stipulate in the marriage contract that in certain cases, which are under her own discretion, she can get divorced without requiring the consent of her husband. Should her husband accept the stipulations, he would have no right to prevent the divorce. Similar rules also apply [even] in the absence of such stipulations. If the husband does not honor his wife's rights and a just judge cannot make him protect these either through persuasion or coercion, and if the wife has fallen into difficulties because of the marital relation with the man and also she requests the divorce, the judge can persuade the man to divorce his wife. If the man refuses, the judge himself can divorce the wife.

As for testifying, regarding financial issues and claims or topics that are related to property, the testimony of women, whether corroborating a man's testimony or not, is accepted and valid. This applies to debts in general, like credit (*qarḡ*), the value of a sold item, the value of an advance payment etc., confiscation, any kind of barter agreements, or inheritances. Women's testimony is also admitted for crimes which require blood money being paid like negligent homicide (*ḡenāyat-e ḡatā'ī*), manslaughter (*šebh-e 'amd*) or the killing of a child by his father, the killing of an infidel *zemmī*, and even for the principle of marriage

(*aṣl-e nekāḥ*), the principle of choosing its time and place, the right of preemption, the cancellation of a contract and all issues connected to financial matters are included.

Similarly, in some laws and issues in which men usually have difficulties in obtaining knowledge, the testimony of women is accepted even without the additional testimony of men or the oath of the claimant. This is the case in testimonies on birth, virginity, beginning of menstruation, women's hidden internal defects and breastfeeding. Of course in such a case the testimony of four women is required. Şeyḫ Mofid and Salār (Deylamī), however, ruled that in these areas the testimony of two Muslim and just women is sufficient and effective.²

However, the testimony of women is not accepted in matters that do not concern property, not even if it corroborates male witnesses or the rival party, such as the necessity of retribution or the exemption therefrom, giving testimony regarding genealogy (*nasab*), the new moon (*helāl*), whether one person is a Muslim or mature and to appeal against a divorce, an inheritance or a guardianship.

But Ibn Abī 'Aqīl said: "If they are trustworthy, women's testimonies which accompany those of men are acceptable and effective in all matters. Similarly, Şeyḫ Ṭūsī in his *Mabsūṭ* and Ibn Ğuneyd acknowledged the testimony of women along with that of men as effective in matters of divorce and if a wife wanted to renounce marriage due to an aversion to her husband (*ḥol'*)."³

It is worth recalling that what has been said about women's predominance of feelings over their self-control or, rather, the lack thereof compared to men is characteristic of their majority, not of all individuals. A legislator, regardless of whether divine or human laws are concerned, legislates based on the majority and in general cases of an issue.

Thus, it must be known:

² *Mafātīḥ al-šarā'i'*, vol. 3, p. 291.

³ *Muḥṭalaf al-šī'a*, vol. 8, pp. 454f., pp. 463f.

The Rationale or the Legal Reason of the Differences between Man and Woman in the Transmission of Reports

So far, only the rationale (*ḥekmat*) of not admitting women's testimonies in certain fields has been discussed, not its exhaustive legal reason. In the reports of *'Ilal al-šarā'i'* and *'Uyūn al-aḥbār* is also mentioned that, for example, Muḥammad b. Sanān said: "His Holiness Imām Riḍā laid down the following in his answer to the question why the testimonies of women were not accepted in cases of divorce or as far as the sighting of the new moon is concerned: 'The eyesight of women is weak. In the case of divorce, women are partial towards their own gender.'"⁴

From this report, we can draw two conclusions. First, the non-admission of the female testimony in the fields mentioned is not a command related to religious worship whose basis and complete philosophy should be incomprehensible to humans. Second, the manifest meaning of the *ḥadīṣ* "Due to the weakness of their eyesight and ..." and also "for this reason, their testimonies are not admitted except in an instance of necessity (*ḍarūra*) ..." is the same original legal reason like in the aforementioned reports for not admitting women's testimony. Consequently, if it can be established with certainty that the eyesight of some women is not weak or that they are not biased toward their gender in cases of divorce, it can surely be said that the reason for refusing to accept their testimony is groundless.

The same applies to the topic of consulting with women as has been transmitted from His Holiness the Commander [of the Faithful]: "Beware of consulting with women. Their opinions tend to stupidity and their firm determination to weakness."⁵ This argument absolutely does not include all women. There are certainly women who are not like that. The ruling does not target consulting with those women who lack the two aforementioned negative traits. Similarly, if men were to be found who have these two traits, they would be included in the warning above. In fact, His Holiness' ban is aimed at anyone who has weak mental capabilities or makes unsound decisions, man or woman.

⁴ *Wasā'il al-šī'a*, Book on Testimonies, chapter 24, *ḥadīṣ* 50.

⁵ *Nabḥ al-balāḡa* (ed. Šubḥi Šāliḥ), letter 31.

Regarding the reasoning in the reports of '*Ilal al-šarā'i*', it too is said that the subject of the ruling of not admitting the testimony is somebody whose eyesight is weak or, in the case of divorce, someone who is biased towards his own gender. Hence, if a woman does not have these traits, the report might not include her, while the testimony of a man who does have them would not be valid.

The Role of Pagan (*ğāheli*) Customs in the Lack of Development of Women

2. It is likely that because women in the past and during the age of the Prophet and the Imāms were under the influence of traditional ways and customs and rituals dating back to pre-Islamic times (*ğāheliya*), they did not participate in the general cultural and societal development, and they had very little capacity to be admitted into the public sphere of important matters, such as judging, testifying, etc., and so the wise Lawgiver relieved them of such matters. We can refer to two things to confirm this possibility:

a) The aforementioned report of '*Ilal al-šarā'i*', in which Imām Rezā did not accept women's testimony in confirming the new moon or in a divorce case due to the deficient eyesight of women regarding the moon and their bias towards their own gender in the context of divorce.

It is obvious that this is not an eternal argument and cannot serve as a proof for all women. This is even more true if we consider all the different tribes, peoples, and regions. And so one must stick with the cases in which it is true. This in itself is proof of the aforementioned possibility how the relevant reports bear witness to a specific circumstance, time, and place.

b) There are reports which use the expression "I do not allow (*lā ağīz*)" instead of "It is not allowed (*lā yağūz*)", etc. in order to deny the admission of women's testimony in specific cases, which does not express a permanent divine ruling. Rather, it resembles rulings which depend on a specific condition, time, and place.

Among these reports are the following:

1) Imām Ṣādeq was asked about the testimonies of women regarding marriage. He said: “Alī used to say: I do not admit their testimonies (*lā aḡīzḥā*) in the context of divorce ... Truly, the Messenger of God granted the testimony of women in religion along with the oath of the claimant (*yamīn al-ṭālib*) ...”⁶ In another report (*ḥadīṣ* 43) it says: “I grant the testimony of women even without a man testifying with them (*wa-laysa ma‘hunna raḡul*)”.

2) And in another report from His Holiness we read: “He was asked about a man who had died, leaving behind his pregnant wife. After his death, she gave birth to a boy. The boy died after he had come out of the womb. The woman, who vouched for it, testified that he had raised his voice and cried when he came out of the womb and [only] then died. He said: It is obligatory for the Imām that he accepts her testimony for up to a quarter of the boy’s inheritance.”⁷

3) On the authority of Abū ‘Abdallāh, who said: “I grant the testimony of women regarding the boy and whether he cried or did not cry ...”⁸

4) From His Holiness Imām Ṣādeq is reported that he said: “The Commander of the Faithful came across a virgin of whom the people said that she had committed adultery. He called for the women that they examine her and they said: ‘She is a virgin.’ He said: ‘I am not going to lash someone who still has the seal of God on her (*ḥātim min Allāh*, i.e. the hymen).’ He used to permit the testimony of women in such situations.”⁹

5) From His Holiness Imām Bāqer is reported that he said: “The Commander of the Faithful judged a will which was only witnessed by

⁶ *Wasā’il al-šī’a*, Book on Testimonies, chapter 24, *ḥadīṣ* 2, 20 and 43.

⁷ *Ibid.*, *ḥadīṣ* 6.

⁸ *Ibid.*, *ḥadīṣ* 12.

⁹ *Ibid.*, *ḥadīṣ* 13 and 49.

a woman. He ruled that the woman's testimony was admissible for one fourth of the will ..."¹⁰

6) In another report from His Holiness we read: "The Commander of the Faithful judged a boy. A woman testified against him that he had pushed another boy down a well and killed him. 'Alī accepted the woman's testimony after examining her testimony (*bi-ḥisāb šahādat al-mar'a*)."¹¹ Al-Šadūq transmits this *ḥadīṣ* with an *esnād* that goes back to the juridical decision of the Commander of the Faithful, dropping, however, his saying "after examining her testimony (*bi-ḥisāb šahādat al-mar'a*)".

7) Similarly, it has been transmitted from Imām Šādeq that he said: "... The Commander of the Faithful used to accept the testimony of two women if a marriage was contested (*al-nikāḥ 'ind al-inkār*). Yet, he would accept in matters of divorce only two just male witnesses. The Messenger of God and the Commander of the Faithful after him ruled among you in such a way ..."¹²

Of course, it can be said that a woman's testimony being permissible means making it effective so that it must be accepted in issues concerning property. Thus, some reports state: "It is obligatory for the Imām that he admits", not "it is up to the Imām to admit". On the other hand, in most of the reports mentioned the expression "he judged (*qadā*)" is used. This is a conjectural proof that the purpose of the permission in these reports is of the same nature as the permission befitting an Islamic ruler.

Based on this hypothesis, it is possible that the previously mentioned reports [, which deny any testimony for women,] reflect the view of a specific situation and circumstance. Given this possibility, there remains no reason to believe that these reports refer to an unchanging divine ruling.

¹⁰ Ibid., *ḥadīṣ* 15.

¹¹ Ibid., *ḥadīṣ* 26.

¹² Ibid., *ḥadīṣ* 35.

The Reason for the Difference between Man and Woman Regarding Blood Money (*deye*) and Inheritance (*ers*)

3) The third issue concerns the difference in blood money and inheritance between a man and a woman. This has nothing to do with a value judgment so that one might think the human worth of a woman is considered to be only half that of a man. Rather, with regard to blood money this is maybe the case due to a more pronounced male role in securing the material and financial necessities of society and the family. The man takes up the professions of production, trade, and exhausting crafts and also has to bear the responsibility to secure the livelihood of his wife and children in addition to his wife's dowry. Even though women today have palpably increased their presence in the aforementioned economic affairs, men's role is still many times greater. Assuming this, the loss due to a man's being killed in relation to the economic security of society and family is greater than the economic loss due to a woman's being killed, and the doubling of a man's blood money compensates for this to some extent.

In the same manner in the field of inheritance, since the support of his wife and children as well as his wife's dowry is upon the man, justice necessitates that the man's share of society's wealth be twice a woman's. In other words, if we consider the sum of men and women and the wealth which is transferred from one generation to the next, we will see that the conservation and increase of these riches requires planning and insight. This obligation is a grave one. In this phase, God has laid two thirds of it on the shoulders of men and one third on women to ease the burden of the latter relative to the former. But in the phase of spending and consuming money, women mostly not only equal men, but outdo them, since in addition to the usual expenses, women also generally need financial resources for beauty care. This is probably the reason why the husband is responsible for providing for the wife, including beauty care, and for the children. Contrary to the provision for the children and the parents, the provision for the wife is part of her rights so that should he not comply, the man is forced to pay it. Thus, men are obliged to spend at least half of their wealth on the needs of their wife and children. Yet wives are under no obligation to spend their property, which is one third of the total amount, on anything specific.

Therefore, in the spending phase, men control one third of the wealth whereas two thirds belong to their wives.

It should be noted that in addition to providing for his wife's sustenance and assuring her dowry, blood money for negligent homicide—provided that it can be substantiated by a clear proof—, which is the responsibility of the murderer's male agnates (*'āqele*), must be borne only by men; for women are not counted among the male agnates.

Similarly, it should be noted that the environment in which Islam was revealed was totally pagan (*ġāhelī*). Women were held completely worthless and did not share in a third of the deceased person's inheritance. The slogan of this environment was that “our sons are only the sons of our sons” and the wife of the deceased was inherited along with his property. In such an atmosphere, Islam gave women the right to own property and to inherit from the deceased. Finally, for the above-indicated reasons, her share was set at only half that of a man's.

The Difference between the Nature of Apostasy and a Mere Change of Creed

Choosing or changing a religion and a belief is different from apostasy. A person who is attempting to arrive at the religion of truth and a belief which corresponds with reality naturally adopts a specific religion or a particular creed or changes his previous one. In either case, he perceives himself as being justified and acting as a seeker of truth, although perhaps it might be considered erroneous by others. An apostate, however, is not trying to arrive at the truth. Rather, he knows the truth and where it is located. Despite this knowledge he busies himself to fight against it and to deny the truth. It is for this reason that he is in essence an apostate, a rebel, a denier and an obstinate person.

The noble verse Q47:25 refers to this: “Those who have turned back in their traces after the guidance has become clear to them, Satan it was that tempted them.” It is known that someone for whom the path of guidance and truth is clear but nevertheless turns his back on the truth and returns to the wrong way cannot have any other motive than stubborn denial. “To turn back in one's traces (*irtidād 'alā l-idbār*)” is not an exclusively mental or emotional act, void of external action. Such

persons, in order to fight against and to deny the truth, inevitably [also] initiate actions (*taḥarrokātī*) which naturally cause friction with religious society and the rights of its members. In this case, the religious authority cannot remain indifferent when confronted with such actions.

In the aforementioned noble verse no worldly punishments are noted, but they are in the reports. Since apostasy necessitates confrontation and friction with the rights of the Islamic society, the religious authority is responsible for appropriately confronting them. Consequently, apostasy must be confirmed in a just *šar'ī* court of law which also issues the ruling. Like other divinely prescribed punishments (*ḥudūd*) for crimes which are explicitly dealt with in the *šar'ī'a*, apostasy is among these crimes to be established either by a clear proof or a conclusive confession and a verdict has to be issued. Establishing apostasy is no easy task. For in the case of apostasy, one must see with certainty and clarity that the charges against an apostate are true. But certainty and clarity is not in evidence in psychological issues. One cannot substantiate any serious intention of the speaker simply over his words or an actor simply over his actions. In a case of apostasy and as well as all the other sins which are subject to *ḥadd*-punishments or discretionary punishment (*ta'zīr*), neither *ḥadd* nor *ta'zīr* ought to be carried out should there be the slightest doubt in confirming the crime. The most noble Prophet has said: "Refrain from the *ḥudūd*-punishments if doubts exist."¹³ Aside from this—as I have established earlier—in the case of apostasy the apostates' stubborn rebelliousness is also a sort of war against the Muslims. During the period when Islam had not yet reached a consolidated stage and when there were still relatively few Muslims, a group of those who strayed from Islam and fought against it conspired to weaken and ultimately eliminate Islam: a good number of them attached themselves outwardly to this religion and became Muslims. After a short while, however, they declared their revulsion against it and apostatized. In this way, they led astray from religion new Muslims and persons whose faith was not yet firm. The wise Qur'ān in verse 173 of the chapter *Āl 'Imrān* expresses this conspiracy as follows: "There is a party of the People of the Book, say, 'Believe in what has

¹³) *Wasā'il al-šar'ī'a*, vol. 18, chapter 24: Preliminaries of the *ḥudūd*.

been sent down upon those who believe at the beginning of the day, and disbelieve at the end of it; haply they will then return.”

In addition, when the polytheists were fighting the Muslims apostatizing from Islam was a sort of joining Islam's enemies and collaborating with them. Finally, apostasy during the time of the most noble Prophet and even during the period of the Imāms was more than changing one's creed or expressing it.

Points Concerning Discretionary Punishment (*ta'zīr*) for Abandoning Obligations and Committing the Forbidden

4) Some points need to be mentioned in the case of discretionary punishment for abandoning obligations and committing the forbidden.

First point: Is discretionary punishment permissible at all?

The first principle lays down that nobody has any guardianship or power over anyone else. In accordance with this principle, it is impermissible to subject anyone to discretionary punishment. *Ta'zīr* means power over or intrusion into the affairs of someone else, which is impermissible by reason and by divine law, except in cases in which the Lawgiver permits it.

In order to provide a justification for *ta'zīr*-punishments in the case of every sin—in addition to claiming consensus and unanimity on this issue, as it is mentioned in *Ġawāhir al-kalām*¹⁴—some proofs are [usually] adduced as follows:

First proof:

The life of the most noble Prophet and His Holiness, the Commander [of the Faithful]. Although they both subjected in specific cases [only certain] individuals to discretionary punishment—as has been documented at length in my discussion on public order (*ḥesba*)—,¹⁵ one can, by eliminating the particularities, extend the permissibility of *ta'zīr*-

¹⁴ *Ġawāhir al-kalām*, vol. 41, p. 448.

¹⁵ *Dirāsāt fī wilāyat al-faqīh*, vol. 2, pp. 263ff.

punishments from these specific situations to the remaining cases. Despite all of this, extending the ruling that it is permissible to execute discretionary punishment by eliminating the particularities becomes dubious if we note that no general criterion or principle from the most noble Prophet and His Holiness the Commander [of the Faithful] are mentioned, let alone other considerations.

Second proof:

Reports of Commanding Right and Forbidding Wrong (*amr be ma'rūf va nahī az monkar*) which argue for the necessity to forbid wrong either with the heart, the tongue and the hand or something to this effect. These reports can be found in the third chapter of the "Chapters on Commanding Right and Forbidding Wrong" in the *Waṣā'il al-ṣī'a*. Yet, the argument of these reports is worrying, too, because the aim of Commanding Right and Forbidding Wrong is to prevent the perpetration of wrong and the abstention from right. Yet, this has nothing to do with discretionary punishments, which concern punishing criminals, unless it be said that restraining the perpetrators of wrong or the abstainer from right by force includes discretionary punishment and that this discretionary punishment, in addition to being considered his chastisement, is also considered a form of restraint from crime and so constitutes Commanding Right and Forbidding Wrong.

Third proof:

An enlightening report which argues that God has set for everything a limit (*ḥadd*) and for every person who would transgress it, He has formulated a punishment (*ḥadd*). Among the sound reports of Dā'ūd b. Farqad on the authority of Imām Ṣādeq is the following which is a quotation from the Prophet: "God has established for everything its limit (*ḥaddan*) and established for the one who transgresses this limit a punishment (*ḥaddan*).” Reports two and three of the second chapter have the same meaning. The first deals with a person who has committed adultery (*zenā*) with a married woman; the second with absolute adultery (*moṭlaq-e zenā*); the third report with theft and *zenā*. The sentence "Indeed God has established for everything a limit ...", which appears with slight modifications in all three reports, serves as an explanation for the ruling and its outward sense has a general meaning. In

such cases, the general meaning of an explanation is proof for utilizing the general commandment. Referring to it in a special case is no impediment to its appearing in the general case. This interpretation is strengthened by the second report from the third chapter of the chapters on the “Preliminaries of the *ḥadd*-punishments”. There Imām Ṣādeq states in a general sense without mentioning a particular wrongdoing: “Indeed for each thing there is a limit established and for the person who transgresses this limit a *ḥadd*-punishment applies.” The meaning of *ḥadd* in these reports, which is mentioned in reference to transgressing the divinely prescribed limits (*ḥodūd*), is not what is usually denoted by *ḥadd* and would establish the punishment for specific wrongdoings. What is meant by *ḥadd* in the first sentence has nothing to do with requiring or banning certain things. Rather, some issues are classified as recommended (*esteḥāb*), reprehensible (*kerāhat*) or permissible (*ebāḥe*), and surely for none of these three classifications any *ḥadd* or discretionary punishment does apply. Indeed, the point is that God has established a limit for everything which shall not be transgressed. For example, He has established a boundary for sleeping with a woman and the pleasure derived from her. He has established a boundary for using money. He has established a boundary for eating and drinking. He has established a boundary for listening and looking, etc. In this sense, “Indeed God has established for everything its limit” is true in general because in Islam everything is supposed to have a boundary.

Testifying to this meaning is the report by ‘Amr b. Qays on Imām Ṣādeq who told him: “Oh ‘Amr b. Qays, are you aware that God Most High sent a messenger and revealed to him a book and sent down in the book all that which he needs and made this revelation a proof which points to Him and established for everything a limit and for the one who transgresses it a *ḥadd*-punishment? He said: ‘I said: He sent a messenger, and revealed to him a book and sent down in the book all that which he needs and made this revelation a proof which points to Him and established for everything a limit and for the one who transgresses it a *ḥadd*-punishment?’ He said: ‘Yes.’ I said: ‘How is it that for someone who transgresses the limit a *ḥadd*-punishment is established (*wakayfa li-man ḡāwaza al-ḥadd ḥaddan*)?’ He said: ‘Verily, God has determined regarding property that everybody accepts only that which is lawful for him. If someone appropriates something which is not law-

ful for him, cutting off his hand is the *ḥadd*-punishment for transgressing the limit. Likewise, God Most High has made clear that marriage is only to be consummated with someone who is lawful for the one who consummates it. Should someone act contrary to this, there is a *ḥadd*-punishment [prescribed] in the case he is unmarried. If he is married, stoning applies for transgressing the limit.”¹⁶

But there is a doubt as to whether every misdeed, no matter how minor or private, requires a discretionary punishment. Such is the clear meaning of the expression in the *Mabsūṭ*, *Šarā’i’* and *Qawā’id*.¹⁷ The author of the *Ġawāhir*, although he subscribes to the general application of the rule to minor sins (*ṣaġā’er*) and claims that his position is not contradictory to the the proof text (*naṣṣ*) and *fatwā*, said, “One might say that discretionary punishment is a particularity of major sins, not of minor ones, under the condition that the perpetrator of a minor sin avoids major ones.”¹⁸ The view by the author of the *Ġawāhir* is based on the following noble verse which commands (Q4:31): “If you avoid the heinous sins that are forbidden you, We will acquit you of your evil deeds, and admit you by the gate of honor.”

The author of the *Ġawāhir* states that the acquittal from sins (*takfīr*) [in the verse] necessitates [the conclusion that] there is no discretionary punishment set for them, although it can be said that the *takfīr* [in the sense of acquittal] mentioned in this verse has to do with torture in the hereafter, not punishment in this world.

One might note [the following] about the aforementioned reports concerning the essence of the argument: such reasoning would necessitate that *ḥadd* in the first sentence (“Verily, God has established for everything a limit (*ḥadd*)”) means obligations and prohibitions, whereas “transgression (*ta’addī*)” would denote the abandonment of acting on it. The consequence of this understanding would be that everything is either obligatory or forbidden, which is not the case. Many things are neither obligatory nor forbidden and there is no punishment for avoiding or engaging in them. Thus, the meaning of the aforementioned

¹⁶) *Rawḍat al-mutaqīn*, vol. 10, p. 5.

¹⁷) *Kitāb al-Mabsūṭ fī fiqh al-imāmīya*, vol. 8, p. 69; *‘Ilal al-šarā’i’*, vol. 4, p. 168; *Qawā’id al-aḥkām*, vol. 2, p. 262.

¹⁸) *Ġawāhir al-kalām*, vol. 41, p. 448.

reports is that God has established for everything a rule (*ḥokmī*) and also for every person who tries to transgress that rule, that is, to change it, a limit and a ruling. This corresponds to legislation which belongs to the category of definitive prohibitions (*moharramāt-e qaṭʿī*) and is not restricted to [mere] obligations and prohibitions, nor does it have any relation to *taʿzīr*-punishments. But it can be said in reply: if we accept this understanding of the reports, it means, to put it simply, the permissibility of discretionary punishment, at least in reference to someone who has attempted to legislate [although legislation is God's prerogative].

Second point: Is discretionary punishment obligatory in the same way as carrying out *ḥodūd*-punishments?

Regardless of how many reports and sayings of the companions we adduce, most them are concerned with establishing in specific situations and with a particular textual proof the obligation of *taʿzīr*. They are of no use in a discussion of the [general] obligation of *taʿzīr*, since after affirming the principle of its permissibility, in particular cases repentance can render *taʿzīr* invalid like when an evildoer repents before his sin is established in front of the judge. Maybe it can be said, considering the first principle, that people do not have guardianship over each other unless *taʿzīr* is permitted or obligatory in the case that the evildoer has not repented before his crime is established in front of the judge. Thus, repentance can render discretionary punishment invalid. Even if there is a suspicion or the possibility of repentance, a *taʿzīr*-punishment can no longer be executed according to the famous report from the most noble Prophet who said: "Refrain from the *ḥudūd*-punishments if doubts exist",¹⁹ regardless of whether the rights of God or the rights of men have been affected. The same applies to God's rights: if the sin of a person be established in front of a fully-qualified judge not through confession, the judge can according to his own discretion grant a pardon. As far as the rights of men are concerned: if the victim grants a pardon, the Islamic judge can also do so.

¹⁹ *Wasā'il al-šī'a*, vol. 18, chapter 24: Preliminaries of the *ḥodūd*.

Third point: The meaning of *ta'zīr* and its aim

By examining most of the remarks of the linguists it emerges that there is no sign of beating in the meaning of *ta'zīr*. Rather, most of these experts found it to mean to forbid or admonish, to reject or to rebuke or to help.

And when it is seen that in some words of the linguists and *foqabā'* or in some reports beating (*ẓarb*) is mentioned, this is [simply] an indication of how common it was in preventing and chastising and rebuking. Beating is the simplest means which is at everyone's disposal and, moreover, is more in accord with the culture and customs of centuries past. This does not mean, however, that *ta'zīr* would have taken this on as its primary linguistic meaning or that it would be identical with beating in the context of the truth of the religious law. Moreover, it includes all those meanings which denote the obligation to hinder or to admonish the evildoer and to force him away from the situation of sin. It would even apply to vituperation, to strong language, to make a face, to give advice or to get the evildoer to notice his sin, etc. It is mentioned in one report from His Holiness the Commander [of the Faithful]: "For many a sin, the extent of its punishment (*miqdār al-'uqūba 'alayhi*) is to inform the evildoer about it."²⁰ In this report, the very act of informing a person about sin, according to some people, serves as punishment and *ta'zīr*.

At the same time, some reports use the word "punishment (*'oqūbat*)" instead of "discretionary punishment (*ta'zīr*)" like in the previously mentioned report.

Moreover, *ta'zīr* is in no way restricted to the meaning "to beat". If it is possible to admonish or to prevent an evildoer and to warn him and others by means which are lighter than hitting, then the discretionary punishment of beating is absolutely impermissible. It follows—as has been said—that *ta'zīr*, contrary to the first principle, is acceptable to reason and to the religious law. Permission for it requires a definite indication from the judge (*šāri'*). In cases in which the primary goal and aim of discretionary punishment, namely admonishing the evildoer and preventing him from repeating his sin, can be achieved with lighter methods or means other than hitting, there is no proof that it is per-

²⁰ *Ġurar wa-durar*, vol. 4, p. 73, *ḥadīṣ* 5342.

missible to use more severe forms or to beat. If related reports mention hitting—as has been discussed previously—this is only an indication that it was common. It is even likely that this fact kept *ta'zīr* from appearing in reports about beating.

Building on this argument and noting that *ta'zīr*—in cases in which its application has been established through a firm textual proof—depends on the point of view and the discernment of the fully-qualified judge, who is obliged to review and to consider the conditions of time and place as well as the psychological condition of the evildoer and his social position. Discerning such aspects requires a committed expert aware of the criminal's various social and cultural facets as well as the changing conditions of time and place. Therefore, *ta'zīr*, as it appears in the reports which discuss it, does not count among the affairs that are related to worship, the wisdom of which is impenetrable to the human mind. Rather, by making use of the life of the most noble Prophet and His Holiness the Commander [of the Faithful] and reports related to the topic, it becomes obvious that the primary goal of *ta'zīr*-legislation is to reform the evildoer and prevent him from continuing the sin, to admonish him, to warn him, and to reform society. This can clearly be achieved in one time or place in a particular way and in another time and place by another way. It is undeniable that people's cultures, customs, rituals and the societal development all have tremendous impact on the way the above-mentioned goal is reached and it is impossible to understand this without an expert (*kāršenās*). A more elaborate discussion of the topic can be found in the book *Studies in the Guardianship of the Jurisprudent (Dirāsāt fī wilāyat al-faqīh)*, vol. 2, p. 205.

It should also be mentioned that:

First:

The permissibility of discretionary punishment for every sin on the basis of a sufficient proof for it or even a particular scriptural proof text does not mean forcing people to act according to the obligatory acts and to abstain from the forbidden as the case may be. Such a pressure would be a sort of compulsion in religion or piety which contradicts the noble verse “There is no compulsion in religion (*lā ikrāha fī l-dīn*).” On the other hand, in addition to the fact that coercion to piety is

neither useful nor effective, it also defeats the purpose, since imposing religion and piety on a person usually leads to a negative reaction and a revulsion and an aversion towards religion. In fact, discretionary punishment is a sort of punishment for violating the sanctity of the religious law's commandments in public view or for violating individual or social rights and not to impose piety or to punish impiety.

Second:

The permissibility of *ta'zīr*, on the assumption that it is acceptable for every crime, is not a license for the Islamic government to intrude in people's personal affairs and to gather information about them in order to prevent wrongdoing. Such an intrusion would not only amount to spying, which the Qur'ān rejects, but it also violates the order issued by His Holiness the Commander [of the Faithful] to Mālek Aštar, writing in his famous letter: "Among the people, there are faults ('*uyūb*). The ruler (*al-wālī*) is the most fit person to cover them up. Do not disclose that which is hidden from you. You shall set right what is apparent and God will judge what is hidden from you. Try as hard as you can to cover any imperfections." His Holiness is not using "faults" in a common sense. Rather, it denotes those sins which are frequently committed in private and removed from the eyes of others and which are termed by the *šarī'a* as "imperfection [in the field of sexuality] ('*avra*)" and "vice ('*eyb*)".

It should be noted: confronting certain sins, which are called crimes or transgressions (*ğorm va tağāvōz*) of the rights of others and of society, must be separated from *ta'zīr*. One of the obligations of an Islamic government is to preserve public safety, to guarantee justice, and release the oppressed from oppression. This obligation, however, is different from *ta'zīr* as commonly understood. Assuming that discretionary punishment was permissible for every sin committed, even those which are committed in private, and that the required *šar'ī*-proofs were established for the *šarī'a* judge (*hākem-e šar'*), which is extremely unlikely, such a *ta'zīr* punishment would have to be applied with lighter punishments than for those sins which are committed in public, and which—in addition to being rebellion against God—would cause a scandal and insult the public sanctity of the faith and embolden others to sin.

The Religious Government and its Interference in Personal or Social Obligations of Individuals

17th question: In Your Eminence's political opinion, how should the religious government handle individual obligations and the case of their neglect like prayer, fasting or even cultural and social issues like the *ḥeġāb*? Is the government entitled to enforce these obligations by using force and coercion to make people, regardless of what a small minority they are, to do these and if they fail to comply, to punish them? Basically, is the people's lifestyle and the way they wear their clothes to be determined by the government or is this the choice of the people themselves?

Answer: One must distinguish first of all between "crime (*ġorm*)" and "sin (*gonāb*)" in a religious government. A sin is an act in which man violates God's command. It can either be connected to the relation between God and man, like abandoning prayer, fasting or going on the pilgrimage (*ḥaġġ*), or to the rights between men, like stealing, hurting or insulting others, evil and tyranny. Usually, if the wrongdoing is committed in the second arena (even if it appears to belong to the first), it is called a "crime (*ġorm*)" and the religious government is obliged to preserve public safety, freedom, justice and morality. If a sin hinders the establishment of safety, freedom or justice, the religious government is obliged to prevent it. But religious obligations, like principles of faith (*e'teqādāt*), are unenforceable. In other words, just as using coercion in establishing a certain creed or using force to achieve the acceptance of a belief system is neither possible nor permissible, so no person can transform other human beings into religious people by using coercion or force if they have no inclination to become such individuals, as much as the former might wish to change society to become religious and committed to carry out its religious obligations. A religious government can lay plans to entuse the people to strive for acts of worship and personal prayer, to carry out their ritual prayers and to fast, but it does not have the right force or coerce people to do these things. Of course if a person wants to dishonor the *šarī'a*, like if he eats without any excuse, in full knowledge and deliberately, in a public place in the month of Ramadan, the Islamic judge can sentence him to a discretionary punishment for it. As has been indicated before, however, this

does not constitute coercion to carry out religious obligations. In short, the difference is between complying with the *šarī'a* out of coercion on the one hand, and government encouragement to desire compliance with the *šarī'a*, on the other hand. If the government devises a strategy to forcefully implement the *šarī'a*, this will not only fail to solve the problem of the people's resistance to these ordinances, but it will also lead, the more people are forced, to neglect and hostility with regard to religion. To put it differently, using indirect and practical methods to encourage people to comply with the *šarī'a* is much more effective than legal obligations. The noble Qur'ān says in this context: "Those we have firmly established on earth carry out the prayer, give the charity tax (*zakāt*), command what is right and forbid what is wrong" (Q22:41). This noble verse nowhere understands there to be coercion in executing divine obligations. Rather, it is implied that whoever has power should strive to prepare the way for spirituality and justice, for example, establishing mosques and cultural centers, preparing resources, by forming political parties, supervising officials and each other.

The same applies to fasting, the *ḥağğ*, other acts of worship, and the question of the *ḥeğāb* if they relate to the public sphere, i.e. if they harm the rights of society and lead to prostitution and spread moral depravity. Of course, in such a case, they count among the second group [that is, as crimes]. As for the *ḥeğāb*, the nature of the garment and covering the hair, etc., is required of every Muslim woman. The believers must educate their children in this matter. They must make it clear that the *ḥeğāb* is an obligation commanded by the *šarī'a* which requires them to follow it. There is no proof derived from the *šarī'a*, however, which permits imposing it on the people, provided that this noncompliance does not infringe on the rights of the majority or does not prepare the ground for corruption or the spread of immorality. In this regard, the best strategy is to embark on cultural and educational activities and to employ indirect methods to encourage the people or to awaken a longing in them.

God declares in the noble verse 25 of the *sūra* "the Iron": "So that men would act according to justice", [which means] in order that the people themselves, under the influence of the prophets' guidance as well as their cultural and intellectual activities, would stick to justice. The Qur'ān did not say: "until the prophets establish justice", so that

there would be no hint of implementing the *šarī'a* and justice by force or coercion. The verse continues as follows (Q57:26): “And We sent down iron, wherein is great might, and many uses for men, and so that God might know who helps Him, and His Messengers, in the Unseen.” This concerns the defense of Islam against aggressors and the fight with infidels, as we can also deduce from various reports, and considering other reports and the beginning of the aforementioned verse, there is nowhere any indication of the imposition of beliefs or obligations on individuals.

Similarly, we once again must mention the first rational and *šarī'i* principle, namely that the guardianship of one person over another is not permissible, except as deduced by proof. Moreover, whenever we have any doubt about confirming guardianship of one person over another, we apply the principle to establish a lack of guardianship. Or, whenever any doubt should arise about the extent or the quality of guardianship of another, we are a bit more than convinced to deny the guardianship. Moreover, in discussing the implementation of the guardianship by the religious government, if there is a doubt in confirming the guardianship in the private sphere of the lives of individuals, which there is, I am a bit more than convinced that it is the public sphere of the individuals' lives which is the subject of the guardianship's proper activity. In addition, any discussion of government and guardianship is founded on urgent necessity, as it is said “The people are in need of a ruler (*amīr*), be he righteous or immoral.” Obviously, in a discussion of urgent necessity, the principle “necessities are determined by their degree” stipulates that one must make changes only to the degree of one's level of certainty.

Misguiding Books with a Focus on the Spread of Mass Media

19th question: What is your position regarding non-Islamic, or rather anti-Islamic, books which are the product of anti-religious culture and their distribution? Can an Islamic government ban them? In a more general sense, does the term “misguiding books” have any meaning today in the face of the spread of means of mass communication? Should this be the case, who would have the authority to determine this?

Answer: Regarding misguiding books, some points must be raised.

First point: A “misguiding book” is a book which causes deviation, unbelief and polytheism of everyone or a majority or which spreads corruption and sin among them. Those books which do not cause such deviations among most or the majority of individuals do not fall under this category.

Second point: There is no question about banning the composition and distribution of such books. What is the subject of discussion is how an Islamic government deals with them. Arguments have been made about the ban on their composition and distribution.

1) The noble verse Q24:6 [sic!]:²¹ “Some men there are who buy diverting talk (*lahū ḥadīṭ*) to lead astray from the way of God without knowledge, and to take it in mockery; those—there awaits them a humbling chastisement.”

Misguiding books are precisely what is meant by the expression *lahū ḥadīṭ*. The meaning of *lahū ḥadīṭ* is hinted at by the sentence “to lead astray from the path of God”. It comprises every word or writing which leads man to deviate and stray from the path of God.

2) The noble verse Q5:2: “Do not cooperate on sin and enmity.” It is clear that strengthening unbelief and polytheism and the spread of sin and corruption are examples of sin and enmity.

3) The saying by Imām Ṣādeq, recorded in the *Tuḥaf al-‘uqūl*: “Everything is forbidden which would bring one nearer to something other than God, through which unbelief or polytheism in all aspects of disobedience would be strengthened, or which weakens that which is right. It is legally impermissible to sell or buy such things, to touch or own them, to give them as a gift or to borrow them, to have them at one’s disposal in any way with the exception that necessity would require it in a specific situation.”

Similar is: “Verily, God has outlawed all those products which are forbidden in their entirety since only corruption emerges from them. Among them are musical instruments (*al-barābīṭ*), certain kinds of

²¹⁾ Translator’s note: This verse is not found in *Sūrat al-Nūr*, as Montazerī mentions, but instead in *Sūrat al-Luqṣmān* (Q31:6).

pipe-wood instruments (*mazāmir*), and chess and all that which is played with. The same applies to crosses and idols, as well as what resembles the production of the forbidden beverages and those beverages themselves. Only obvious corruption emerges from these, not even the slightest amount of any benefit. And what is forbidden ...”²²

Of course this *ḥadīṣ*'s chain of transmission is dubious. First: it is incompletely transmitted (*morsal*). The fact that only the author of *Tuḥaf al-ʿuqūl* trusts in the transmitters is not sufficient, even though he is counted among the leading Shīʿī *ʿolamāʾ* and was a contemporary of Ṣadūq, since there are many disagreements among the experts regarding the certainty of the report.

Second: the text of the *ḥadīṣ* is worrisome. It is repetitive and contains sentences which cause doubt as to whether they originated from an infallible Imām. For further information on this topic, refer to the book *Studies in Unlawful Trades (Dirāsāt fī l-makāsib al-muḥarrama)*, vol. 1, p. 88.

4) The rule of eliminating likely harm. The composition and distribution of misguiding books has as its consequence at least the rational likelihood of leading people to transgression and unbelief and the corruption and sin of all or at least some people. Since this likelihood also applies to the means of mass communication (*ālāt-e moštarak*), the conclusion that they must be rejected is a remote one. Whereas it can be said that using misguiding books displays a certain intransigence in one's own abominable behavior, no such insistence in forbidden things applies to the means of mass communication. Thus, there is a difference between the aforementioned compositions and distributions and the establishment of means of mass communication.

5) The report of ʿAbd al-Malek b. Aʿyan has it that he spoke about this topic to Imām Ṣādeq: “I became afflicted with this knowledge (of astrology). Every time I have a business, I use to gaze at the rising star (*tāliʿ*). If I see a rising star of evil, I refrain from my business and stay at home. If, however, it is a rising star of good tidings (*al-ḥayr*), I will

²² *Wasāʾil al-ṣīʿa*, chapter 2 from the chapters on “What is earned through it”, *ḥadīṣ* 1.

carry it out. He said to me: ‘Do you judge?’ I said: ‘Yes.’ He said: ‘Burn your books.’”²³

In the past, the astrologers held that every person and action was under the influence of either a good or a bad star. They identified this as the dominating factor in the destiny of men. This became regarded as a sort of polytheism. Hence, many reports strongly forbid thinking about the stars or interpreting them.

“Do you judge?” in the Imām’s question might mean, “Do you give a definitive ruling according to the good or bad star so that God would effect the course of events in accordance with the interpretation you made?” The transmitter says: “Yes, so it is.”

6) A primary issue understood in the reports is the banning of keeping idols. If the keeping and propagating of idolatry or an idol temple is banned, there is a priority on banning the composition and distribution of books advocating and strengthening idolatry as well.²⁴

Thus, from the perspective of the laws of the *šarī‘a*, there remains no doubt about banning the composition and distribution and every buying and selling of misguiding books.

Third point: Is the Islamic government obliged to confront the composition and distribution of misguiding books and, so to speak, “*ta‘zīr*” the person in charge simply because they are banned?

If we believe that every sin requires the application of a *ta‘zīr*-punishment, then it would seem that we label the topic under discussion as being a major sin. But if we said that we are not arguing for the general application of *ta‘zīr* for all sins, and since *ta‘zīr* contradicts the first principle, its permissibility is limited to special cases which the Prophet and His Holiness the Commander [of the Faithful] carried out in the context of Commanding Right and Forbidding Wrong. In this case, we have no basis to grant the Islamic government the right to apply *ta‘zīr*-punishments to deal with the publication of misguiding books. The aforementioned textual proofs only permit banning these

²³) *Wasā’il al-šī‘a*, Book on Pilgrimage, chapters on the right behavior while traveling, chapter 14, *ḥadīṣ* 1.

²⁴) *Āwābir al-kalām*, vol. 22, p. 54.

books and nothing more. The report of ‘Abd al-Malek b. A‘yan, too, only provides the justification to ban keeping astrological books for ‘Abd al-Malek and the obligation to destroy them. Perhaps we can say: the command of Imām Ṣādeq who obliged ‘Abd al-Malek “burn your books” is a matter of His Holiness’ Imāmate and Islamic government, directed to one individual, and not an expression of a permanent ruling.

Maybe one can infer what obligation an Islamic government has regarding misguiding books from the primary meaning of a saying by the Commander [of the Faithful]: “Oh you people, I have a right over you and you have a right over me. As far as your right is concerned, you have the right to my advice, as well as that I increase your shares, educate you in what you are ignorant about and discipline you (*ta’dīb*) so that you may act upon.”²⁵ For if the people have a claim over the Imām to increase their share—namely, to increase the people’s wealth and capital and to raise their level of education and religious knowledge, [then it follows that] the preservation of religious beliefs, morality, and public modesty from deviation and corruption is primarily the people’s right that the Imām must fulfill in the best possible way. [Of course,] the assumption [here is] that misguiding books threaten or weaken religious beliefs, good morals, and the modesty of the general public or the majority of the people. But the discussion is how such books should be dealt with in our time. This will be discussed at a later point.

Fourth point: Assuming the Islamic government’s obligation to deal with misguiding books, how must this be done? In the past, when there was no printing and publishing industry, such books were dealt with by simply destroying them. This is what the *foqahā’* mean when they talk about eliminating books. Today, however, the printing industry has appeared. And particularly after the introduction of the radio, television, computers with various kinds of software, satellites and the internet, the destruction of cultural products can no longer happen according to historical patterns. Of course some books are still pulped by governments, but they cannot be thoroughly destroyed because there are more ways available today to preserve them.

²⁵ *Nahḡ al-balāḡa* (ed. Ṣubḥī Ṣāliḥ), sermon 34.

Thus, two issues necessarily follow:

First issue: The obligation to destroy misleading books lapses in the case of a lack of capability to do so, except in some specific cases.

Second issue: Another likelihood is raised in the *Ġawābir* when its author writes: “The following has been transmitted from some authorities: It is possible to argue that those books which contain erroneous statements and corrupt beliefs and which have been refuted by learned persons and answered in a sufficient manner, should be thus considered destroyed. Then there is, naturally, no longer any obligation to [physically] eradicate them, as in the case of certain invalid statements which were related in the *Ketāb-e Šāfi* or in *Kašf al-ḥaqq* and subsequently were contradicted and refuted. It is not only unnecessary to destroy such books, there is even no problem with selling and buying them.”²⁶

According to this likelihood, the publication of any misleading book whose subjects have been refuted and contradicted by knowledgeable and intelligent people is unproblematic, particularly if the readers are made aware, be it in those misleading books themselves or by other means, of publications which contain the refutation and invalidation of their message.

Fifth point: We can say that misleading books are like the means of mass communication (*ālāt-e moštarak*) located midway between what is forbidden and what is permissible. Through them, both permissible as well as forbidden things are spread, as it is the case regarding television or satellites. It is obvious that misleading books do not by necessity lead all people astray or would constitute the exclusive reason for falling in error. Rather, those experts (*ahl-e fann*) which attempt to refute these errors are not only not led astray by them, but it is instead outright necessary for them to know about their contents so that they can render them invalid in a conclusive fashion. It can even be argued that making use of misleading books is useful and necessary for these experts, like, for example, to familiarize themselves with topics and scholarship of interest these days, such as the history of human civilizations, the history of customs and traditions, non-revealed religions

²⁶ *Ġawābir al-kalām*, vol. 22, p. 59.

(*adyān-e ġeyr-e āsemānī*), the pre-history of peoples and nations and their views.

Sixth point: What should be done in cases of a disagreement regarding the misleading nature of a book between the government and the authors or publishers of that book? Whose view should take precedence?

If the author or publisher of the book is himself an expert on the question and does not consider the book as misleading, he is surely entitled to such an opinion and there is no justification for the government to impose a *ta'zīr*-punishment on him. This resembles a person who, being convinced that a certain liquid is permissible, drinks it, whereas another person thinks that this liquid is wine. In this case, the one who drinks the liquid cannot receive a discretionary punishment because according to his own opinion, he did not commit anything objectionable. This is in general accordance with a report by the most noble Prophet who said: "Refrain from the *ḥudūd*-punishments if doubts exist." If, however, the book's author or its publisher is no expert in the matter and a disagreement exists, both sides have to submit to the opinion of an authority (*marǧā'i*) on whom both sides can agree and accept him as an expert.

Restrictions Imposed on the Activities of Parties and Independent Media Outlets under Religious Governments

20th question: What are the restrictions imposed on political parties and on independent mass media—be they audio-visual, audio, print, the internet, etc.—in the context of a religious government according to your opinion? Do political parties which are non-religious or even opposed to religion have a right to carry out their activities? Can religious minorities have publications and spread their doctrine? More generally, are there any restrictions placed on the rights of recognized and unrecognized religious minorities or not? What about political minorities (irrespective of whether they accept the basis of an Islamic system or not)? How are these rights protected?

Answer: I have talked in the past about the issue of forming parties and its being a prerequisite for the duty of Commanding Right and Forbidding Wrong. This prerequisite resembles as an obligation the problem to possess a sufficient capability to carry out the duty, which is a rational condition and needs to be achieved. Similarly, the formation of an organization to reach goals in society is also in general an indispensable condition because people on their own are incapable of doing so. In a religious government, political parties and independent mass media can carry out the following restricted activities, provided that they accept the social system (*nezām-e eḡtemā'ī*) as adopted by the majority of the population: supervising the government, criticizing it on logical ground (*enteqād-e manṭeqī*), as well as criticizing the ruler's conduct. They also have a role in responding to various views and opinions regarding the development of the military (*nīrūhā*) as well as indicating which paths would lead to well-being or harm. Additionally, they should make those in positions of responsibility aware of potential dangers facing the country in the course of events. Independent parties, besides that which has already been discussed, have the ability develop a cadre (*kādersāzī*) for better administrating the country and to introduce these cadres to the people so that they might be elected to sensitive posts.

Indeed those parties which either do not accept the political structure of rule or the principle of a religious government as embraced by the majority of the people, nevertheless have the guaranteed right to carry out political activities, propagate their views and to criticize, provided that they respect the rights of the majority.

Non-religious parties and religious minorities likewise, under certain conditions, enjoy the freedom to propagate their views and belief systems. They also can voice logical or regular (*ma'mūl*) criticism of the religious government and point to possible beneficial and harmful developments. They can even participate in government if the majority accepts such an agreement. Of course no party, religious or not, has the right to insult or to slander etc. any of those things which the majority holds sacred, just as the system arising from the views of the majority has no such rights towards political and religious minorities.

Members of non-recognized religious minorities who were born to parents in an Islamic land enjoy the rights to the land and of citizenship. They are by definition not prevented from promoting their creed

(*maktab*) and principles. During the time of the most noble Prophet and His Holiness the Commander [of the Faithful] religious centers of other religions and sects existed under specific conditions and restrictions and were not outlawed by the Islamic government.

His Holiness the Commander [of the Faithful] wrote in his letter to Mālek Aštar regarding the various strata of the Egyptian people: “They belong to two classes: either they are your brother in religion or they are your equal in creation.” It is understood from this that His Holiness’ view was that Egypt’s non-Muslims, who belonged to any of the old religions and various sects—even of those kinds which were not officially recognized—also enjoyed the rights of citizenship and were entitled to feel protected by the religious government.

It must be mentioned that in cases in which the religious government becomes suspicious of any religious, non-religious or even political minority whose activities lead them to be accused of a criminal act, they shall be tried either before an impartial court agreeable to both sides or at least an impartial jury, which is accepted by both sides, must be present at the court. The court must note the jury’s views. This is the case because every official court of a religious government is one party in the dispute and thus can of course not give a verdict that is just and impartial.

The way how to guarantee minorities’ rights, in addition being made possible by the freedom of independent parties and by maintaining an open political sphere, is to have these rights affirmed by the constitution and also by the laws passed by parliament. The paths how to guarantee these have been hinted at.

God willing, you will succeed and be helped.

God’s peace be on all of you and God’s mercy and His blessing.

9/4/1386—Friday, 15/2/1428

Holy Qom, Ḥoseyn ‘Alī Montazārī