

In the Name of

Allah

The Most Beneficent

The Most Merciful

Answering Questions about Islamic Rulings (Istiftās)

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Dynamic Ijtihād

From the Viewpoint of

the Faqih of

the People of the House of Purity and Infallibility (AS),

Grand Ayatollah Saanei

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Dynamic Ijtihād

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Grand Ayatollah Saanei

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Preface

Ijtihād over Time

As a superior knowledge acquired through human intellect, jurisprudence (fiqh) deploys its particular methods and principles to determine the duties and responsibilities of every individual member of society in terms of actions and behaviors. From this point of view, it is a practical and applied knowledge that guides every person through all material and spiritual dimensions of life.

To tackle the different complicated aspects of today's individual and social life of people, jurisprudence needs to, instead of the conventional scrutiny of common, clichéd, and now-defunct issues, get to the heart of issues surrounding humankind's modern life. According to some great scholars, today's jurisprudence and ijtihād should be redirected

from its vertical trends of thought to horizontal ones so as to cover all aspects of people's individual and social life.

The knowledge of jurisprudence is among the broadest branches of Islamic knowledge. It deals with all issues of human life. All that is dealt with as human rights in today's world, including constitutional rights, civil rights, family rights, political rights, and social rights etc., are discussed in different areas of jurisprudence.

The comprehensiveness and multiplicity of jurisprudential branches (Furu'), considering the jurists' (Fuqaha's) approaches to the various dimensions of the societies of their times, has promoted considerable growth in such areas of jurisprudence.

Alongside quantitative development and the multiplication of branches and areas compared to those dealt with in the past, significant qualitative developments have occurred in jurisprudence over the past centuries. However, such quantitative and qualitative developments have not always been simultaneous and consistent. At times, qualitative development has even surpassed the quantitative.

Some of such jurisprudential innovations and developments have been revolutionary. To

cite an example, in the 8th century, the well water that had been in contact with impurity (nijāsah) was declared pure (tāhir) by Allamah Hilli arguing that such contact could not provide sufficient grounds for the impurity of the water. This fatwa was so certain and strong that all later scholars endorsed it.

During its 1200-year history, Shiite jurisprudence has introduced many jurists who have become the pioneers of ijtihād and jurisprudential inference. Some of such creative jurists are Ibn Junayd Iskāfy, Ibn Idrees Hilli, Shaheed al Awal, Shaheed al Thāny, Muhaqiq Ardebeely, Mirzayé Ghomi, and the author of Jawāhir each of whom deployed his particular innovative methods of inference and deduction to produce such valuable works that have helped the revival and perfection of jurisprudence.

In our age, despite the fact that jurisprudence is at a high level and great jurists like Imam Khomeini have opened new windows to it, it is not deservedly progressive and dynamic. In their works, many jurists have long been warning of its being static. One might find out about this problem by speculation. It seems that the emergence of views not so compatible and congruent with

those of scientific circles has caused jurisprudence to remain static, yielding negative results. Nevertheless, the appearance of some of Imam Khomeini's disciples like the forward-looking thinker and faqih, Grand Ayatollah Saanei, has given the seminary schools a glimmer of hope that freethinking and rationality will enrich jurisprudential inferences. Using the bases of *ijtihad*, he has developed a new perspective on jurisprudence and Islamic knowledge, which has caused jurisprudence to become dynamic, adopt new approaches to different jurisprudential issues and their solutions, and thus help meet the needs of human and Islamic societies. Some of his influential fatwas have safeguarded Islamic jurisprudence and even Islam against the scourge of vicious attack and harsh, unfair criticism in society, especially the international society. His famous fatwa on girls' puberty being at 13 years of age is a good example. In this regard, the following is worth reading.

After the release of the two-volume book of *Judicial Istiftās* of Grand Ayatollah Saanei, in one of the meetings with one of the authorities of the Judiciary's Research Center in Tehran, this judicial authority recounted one of his trips to some European countries for scientific

cooperation. In Germany, the German scholars and delegates had questioned the fatwa on girls' puberty being at the age of 9. "I was really desperate until I remembered Ayatollah Saanei's fatwa on the issue and told them that not all fuqaha (religious authorities) consider 9-year-old girls as mature as adult women so as to expect of them the observation and performance of adult-specific obligations," he recounts. "I added, 'There are some fuqaha who deem girls to be religiously responsible (*mukallaf*) at the age of 13, and I can provide you with the proof of their fatwas if you like,'" he says.

There are similar stories about some other fatwas of Grand Ayatollah Saanei to recount which would be beyond the capacity of this piece of writing.

It should be noted that, from the viewpoint of this forward-looking faqih, the growth and improvement of jurisprudence is not a matter of increasing it in size, which should be dealt with in itself. It is, however, a matter of enabling it to tackle more and more of the problems facing the society as well as developing more novel and effective methods of jurisprudential deduction and inference. It would not be right to think that all the methods and

ways of the past Islamic scholars and authorities were fixed, unchangeable, and unable to be developed. More novel and more effective achievements depend on better methods of deduction and jurisprudential inference.

Islam and the holy Quran have provided the general and comprehensive principles required for the management of society based on the foundation stones of justice and the negation of both injustice and submission to injustice. These fixed principles, which are for all times and ages, should be deployed by a faqih in their attempt to infer, deduce, and explain the rules of religion.

This Shiite faqih, too, deploying the same principles and increasing the capacity of jurisprudence through rationality, and being equipped with a comprehensive knowledge of traditions and ways of the Infallibles (AS), and applying such fundamental jurisprudential principles as “human rights and dignity,”¹ “easiness of religion and religious rules,”² and

1- “Certainly We have honored the Children of Adam,” the Quran: 17: 70

2- “Allah desires ease for you and He does not desire hardship for you,” the Quran: 2: 185; and “I was appointed [to introduce] the straight and easy religion...” Furu’ Kāfee: vol. 5, p 494; Kitāb al Nikāh, the Chapter on Kirāhiyat al Rubāniyah wa tark al bāh, hadith no. 1; Awālee al Li’ālee, vol. 1, p 381, Al Maslak al Thalith, hadith no. 3.

“justice and negation of injustice,”¹ has realized the comprehensiveness of jurisprudence in answering the newly raised problems of human society.

This great faqih’s attention to the original mechanisms and sources of jurisprudence, which count as the references and proof in rule deduction, has particularly enriched the innovations, concepts, and contents of his Islamic and jurisprudential views. However, it is obvious that exceeding the capacity of these endless sources and references would lead a faqih to fall into subjective inference. Lest a day come when, in exploring and establishing particular, complicated cases, the progressive Shiite jurisprudence resorts to analogy (ghiyās), preference (istihsān), expediency (istislāh), or interpretation (ta’weel) etc. based on subjective speculations instead of clear, conclusive jurisprudential proof. May God protect jurisprudence against ruination and damage!

It is obvious to the religious authorities that using the original mechanisms and sources is compatible with the jurisprudence identified with the author of Jawāhir. The methods used

1- “The word of your Lord has been fulfilled in truth and justice,” the Quran; 6; 115; “And your Lord is not tyrannical to the servants,” the Quran: 41:46.

in the framework of general rules and sources of jurisprudence are the same as those used in *Jawāhir* at its time. However, the jurisprudential process should evolve its effectiveness and accountability when it comes to new and unprecedented issues and behaviors so that jurisprudence can move from a static state to a dynamic one and thus provide novel ideas and constructs in tackling the problems arising from humankind's modern life and life styles. Among such upward, developmental moves in the area of jurisprudence which have given it a new shape is Grand Ayatollah Saa-nei's special attention to the two elements of reason and justice as well as to the reshaping of their roles and stance in the process of rule deduction. Rational reasoning would protect jurisprudence against fanaticism and rigid thinking. Attention to this fact while avoiding extremism would lead jurisprudence and its contents to rationality; the jurisprudence that should enrich and prove itself in interacting with the other nations and societies of the global village. The needs of the time and the increasing questions raised by society have accelerated the development of a more rational version of jurisprudence. This means a change in the employment of jurisprudential

methods is inevitable should we expect the outcome to interest people in and attract them to the religion and the noble Shari'a, and help to remove doubts and prevent the possible vicious attacks on the realm of jurisprudence and jurisprudential analysis.

Mujtahids play a decisive role in developing and perfecting the jurisprudential system since they need to keep pace with the rapid and dramatic changes and events occurring one after another in the modern era by engaging in such new issues and phenomena and deducting the required rules and instructions through the application of the general laws of Islam. In doing so, correct general understanding and knowledge, and the understanding of the conditions of time and space¹ and people are among the basic requirements in an open *ihthād* system, and only a mujtahid who has the best knowledge of the time and people can be helpful and problem-solving. Jurisprudence deals with the practical laws of society which are always subject to changes resulting from the conditions of time and space.

Perhaps we should consider the research into the subject matters of Islamic rules and in-

1- Just as Imam Sadiq (AS) is quoted as saying, "A scholar who has the knowledge of his time would not face doubt and confusion," *Tuhaf al Uqul*, p. 365.

structions to be the first step towards the dynamism of jurisprudence. The study of subject matters in dynamic *ijtihād* as well as the social, political, and economic infrastructures etc. revives the bedrocks and foundations of mobilizing the traditional jurisprudence, and materializes the external instances and subject matters.

Searching for subject matters in the areas of existing realities strengthens the *faqih* in analyzing the religious issues and deducing the required rulings, and thus satisfying the jurisprudential needs in different circumstances. Ignoring a subject and lacking knowledge and information about it is like an inappropriate remedy for a disease, which may cause irreparable damages. We cannot say that a *faqih* does not need to engage in identifying the subject matters because there are certain subject matters whose limits should be defined by *fuqaha*, and the common man or the religiously-obligated (*mukallaf*) would not be capable of identifying them.

To diagnose a health problem is, in itself, half of the treatment process. Likewise, to exactly and completely understand a subject is half the process of *ijtihād* and inference.

Progressive *ijtihād* imposes such requirements

on jurisprudential seminars and negates ossification and rigid thinking. We hope that, with their diligence, the men of knowledge, piety, and jurisprudence introduce the vitalizing religion of Islam deservedly and properly so that the nations and human societies can enjoy its heights.

The Reflection series is compiled based on this same fundamental and genuine view to address some of the concerns and meet the challenges in the areas of thought and knowledge. The series, inspired by rich religious sources and references, discusses the issues which are the points of disagreement and difference of opinion. In the series, different issues are discussed applying firm reasoning so as to provide clear and logical answers.

We believe that the application of logical thinking and reflection while basing ourselves upon the concrete rules and principles of the religion is a method derived from and encouraged by the depth of Quranic culture.

The first of this series entitled ‘Dynamic *Ijtihād*’ is here for the authorities interested in the field. We hope we can keep moving through the end of the series, and we would welcome any critical reviews by experts and scholars.

All praise is due to Allah, the Lord of the Worlds!

**An Interview with Grand Ayatollah Saanei
about
Jawāhiri Jurisprudence
and
Human Rights**

Interviewer: Abdolkarim Rezvani

Prologue

The following is an interview with Grand Ayatollah Saanei about Jawāhiri jurisprudence, current human rights issues, and questions and doubts raised about such issues, especially those about Islam's stance on human rights issues.

This interview was conducted by the venerable scholar, Mr. Abdolkarim Rezvani, in late March, 2011.

In a part of this interview, addressing the position of human rights in Islam, Grand Ayatollah Saanei says, "Human beings are honorable. 'And indeed, We have honored the Children of Adam.'¹ I believe that all human beings enjoy rights no matter what their race and skin color.² <So blessed is Allah, the best

1- The Quran: 17: 70

2- The Quran: 49: 13

Also, the holy Prophet is quoted as saying, "All people whether white or black, whether of Quraysh, Arab, or non-Arab, are the children of Adam, and God created Adam from clay, and the ones liked most by Him are the most obedient and the most pious of them." Bihār al Anwār: 22: 118, hadith no. 64, and 76:350, hadith no. 13, and 78: 215, hadith no. 108.

of creators,¹ that is, human beings are the same and equal. Condemning the oppression and injustice done by oppressive regimes and reproaching those who are submissive to such oppression, this popular Marja believes, “Islam says that oppressors are sinners; and so are their aides and assistants as well as those who surrender to their oppression.² Could it define the rights of people in a better way? Oppression is the violation of people’s rights. The oppressor, their assistant, and they who surrender to or like such oppression are all sinners; that is, whatever is engaged in it, from the heart to the external action.” In another part of his remarks, Ayatollah Saanei says, “In one way, religion and politics are of the same essence. Politics is the ideas and activities relating to the management of society. Islam and politics are of the same essence; that is, Islam has its own rules for governing and managing the society. It has defined and recognized rights for neighbors, citizens, and friends. It has its rules for business and trade. It has penal and civil laws. It has its own ways

1-The Quran: 23: 14

2- Imam Sadiq (AS) is quoted as saying, “Oppressors, their assistants, and those who surrender to their oppression are all partners in the same crime.” Kafi:2 :333, Bāb ul Thulm, hadith no. 16; Wasāil al Shi’ah: 16: 55, Abwāb Jihad al Nafs, Bāb 80, hadith 10.

of worship and relation with God. Even in this latter case, it is a civil religion: it tells you to perform your prayers in congregation; that is, you should be with one another. I believe that the rules of Islam are sufficient for reforming the society and managing its affairs. However, if by ‘religion and politics are of the same essence’ we mean to impose and dictate our views and ways on people and expect them to act as we say, this is not true about Islam. Not even the holy Prophet (SA) ruled in this way. Just as Imam Khomeini said, ‘The criterion is people’s votes,’¹ i.e. the management of society is upon the people themselves. Our Constitution, too, recognizes that people have sovereignty and authority over the affairs of the society.² The problem is that this Islam that we believe is of the same essence as politics has encountered some despotic, tyrannical moves and ways leading to accuse the open-minded intellectuals, who raise human rights issues, of being unbelievers who should

1- “The absolute Sovereign over the world and human beings is God, and He has given humankind the sovereignty over their affairs and social destinies. No one can deny human beings this God-given right; nor can anyone use this right to the benefit of any individual or group. People exercise this right of theirs in the ways provided herein under the principles that follow.” Iran’s Constitution, Chapter 5, Principle 56.

2- Sahifeyé Noor:8:173

be silenced even by force of arms. This is not what Islam would approve of.”

In response to questions about human rights, Ayatollah Saanei says, “If we were to establish a culture, Islam would recommend a culture in which no one likes oppression or helps the oppressors. Oppression means violating people’s rights.”

The Interview

Interviewer:

On the one hand, you are among the personalities who defend the Jawāhiri Jurisprudence. On the other hand, in the international arena, you are known to be a supporter and defender of human rights. Shall we begin with Jawāhiri Jurisprudence? What are its characteristics and elements? Do you adhere completely to this school of jurisprudence in your jurisprudential deductions or have you established your own new school of jurisprudence?

The Ayatollah:

I seek refuge in God from the cursed Satan. In the name of Allah, the Most Beneficent, the Most Merciful.

The popularity of Jawāhiri Jurisprudence owes to its characteristics and advantages four

of which I will explain here.

1- The abundance and comprehensiveness of deductions: That is, almost all issues and even their relevant secondary issues have been discussed in *Jawāhir*. This shows the precision and talent of the author of *Jawāhir* and his proficiency in jurisprudence.

2- Its consideration of the views of other Marjas: *Jawāhiri Jurisprudence* discusses and analyzes the views of other Marjas in each case and then draws its own conclusion. That is, the author does not start with his own view of an issue to reach his conclusion. Analyzing the views of other Marjas is like consulting them about the issue at hand. It would not be appropriate to ignore the available views of other scholars and Marjas when dealing with an issue.

3- Its consideration of the commonly-accepted views: *Jawāhiri Jurisprudence* considers the famous views commonly accepted by Marjas.

4- Its mention of all reasons and arguments relating to every issue: for every issue, the author of *Jawāhir* considers and mentions all the available literature, from the views of Sheikh Toosi, Sheikh Mofid, and Ibn Junayd of the 1st-3rd centuries to those of Moghaddas Ardebili's and all those who held particular

views. In short, he has developed an original 50-page jurisprudential reference into 42 volumes, 400 pages each, if you calculate it with today's printing standards.

So, a precise, elaborate, comprehensive, and deep discussion of every issue as well as a full review of its literature is what we find in *Jawāhiri Jurisprudence*.

Applying the method of *Jawāhir*, a Marja who is as proficient and learned as its author may or may not come to the same conclusions as his since most views in his book are quotations from others. Even in cases where there are no quotations from other Marjas', one forms one's own version of ideas and makes one's own inferences by reviewing his comments and assumptions on a particular issue. *Jawahiri Jurisprudence* helps you build the necessary foundation for appropriate jurisprudential deduction. It is then that you need to develop your jurisprudential practice by reading Moghaddas Ardebili's work, and this makes you the person who supports human rights. Imam Khomeini is a good example. Even though he was an advocate of *Jawahiri Jurisprudence*, he dared to form his own views in a couple of cases. However, because of the society's vulgarness and lack of capacity, he

failed to express his views. Today, things are different. Communications have increased and the capacity for the acceptance of such fatwas has developed. I would dare to express and discuss my views. In one of the cases, Imam Khomeini issued a fatwa to deem the oil reservoir explored under one's real property belonging to the public and is considered a national property¹. This fatwa raised a lot of objections arguing that one who owns a real property also owns the depth underneath and the height above that property. Imam Khomeini, however, argued that despite the fact that the wise consider the under and above of a landed property as belonging to the owner of that property, the same wise do consider the oil reservoir explored underneath it as a national property. Thus, if the author of *Jawāhir* were alive today, he would side with Imam Khomeini. Imam Khomeini would argue that the attitude of today's wise is different from that of the past's.

In another example, the wise would approve of the fact that, as a land owner, I own the height above it and can therefore build as many stories as I wish. Nevertheless, the same wise would only allow for a commonly acceptable

1- Imam Khomeini's *Sahifeye Noor*:20:402-403

height. Therefore, if a plane flies at a height of 12000 feet, I cannot say that I do not consent to its flight above my property. The wise do not consider me the owner of that height but just the owner of as many stories as I can manage to build. The rest would belong to the nation and to the government resulting from that nation.

These examples show that the best method is to apply a combination of the two: the precision and comprehensiveness of the arguments and proofs as gathered and used in *Jawāhir* and the consideration of today's human rights concerns.

Interviewer:

Thus, do you approve of the *Jawāhiri* Jurisprudence in terms of methodology?

The Ayatollah:

I believe in *Jawāhiri* jurisprudence and also in that of Sheikh Ansari's.

Interviewer:

Do you recognize the classification of jurisprudence into traditional and dynamic types?

The Ayatollah:

I wrote a paper on this issue about three years

ago. In it, I defined what I mean by dynamic jurisprudence. Let me give you an example: in the Quran, we see that Allah has talked about all human beings in the same way and without any discrimination. For instance, in “So blessed is Allah, the best of Creators,”¹ God blesses and admires Himself as the Creator of all humans, no matter what the race or language etc. Or, in “And I breathed into him of My Spirit,”² He talks about all humans being filled with His Spirit. So, all humans have the divine spirit in them. Now, if we come up with a hadith (religious narrative) or a fatwa which deprives women or any other community of their human and civil rights, we should conclude that the hadith or fatwa is not in accord with the essence of those Quranic verses because they are all equal and the same when it comes to being admired for and therefore, they cannot be unequal when it comes to their human rights. This is the dynamicity by which jurisprudence can develop, and no one should disagree with such dynamicity.

Interviewer:

Is Jawāhiri Jurisprudence the dynamic jurisprudence you are talking about?

1- The Quran: 23: 14

2- The Quran: 15: 29

The Ayatollah:

Despite the fact that it has rejected the views of some of the past scholars, Jawāhiri Jurisprudence forms the foundation for dynamic jurisprudence.

Interviewer:

So, do you mean that it is methodologically dynamic and if its author were alive now, he would say so?

The Ayatollah:

Yes, I do.

Interviewer:

You pay particular attention to rationality and justice, don't you?

The Ayatollah:

Yes, I do. It is actually the right thing to do.

Interviewer:

Is the nature of the wisdom in your jurisprudential deduction different from the collective and empirical wisdom that results from humankind's historical experience, or is it that empirical wisdom itself a branch of the wisdom which is considered a source in jurisprudence?

The Ayatollah:

You give me an example collective wisdom and I will elaborate.

Interviewer:

The best example is the Universal Declaration of Human Rights.

The Ayatollah:

Basically, Islam respects humankind's wisdom and sovereignty over life. Our holy Prophet (SA) was ordered to consult with people and follow the majority as far as the enforcement of social laws people's exercise of free will were concerned.

To give you an example, ministries of education and labor are two necessary parts for running a state. Now, we should see where it would be most appropriate to place such ministries, how they should be planned, whether they need the cooperation of the disciplinary forces etc. In such plans and in all aspects of life over which people have discretion, the views of all people should be respected. The holy Prophet (SA) is addressed, "And consult with them in the matter. And when you have decided, then rely upon Allah."¹ This verse of the Quran is about the Uhud battle². The

1- The Quran: 3: 159

2- Al-mizān Exegesis: 4: 56, under verse 159; Tabari History: 2: 189-190

Prophet is ordered to consult with his fellow fighters before making a decision. But what sort of decision is meant? Is it a decision on his own idea even if it is against the idea of the majority? This would not be acceptable to any wise person since it is assumed that the Prophet (SA), too, is a human being and no wise person would advise that he should follow the idea of the minority if he himself is one of them. That which should be respected is the idea and vote of the majority. Thus, "consult with people" means follow the idea of the majority of them. It would even be unwise to adopt a third idea. Every member of a society has their vote but it does not outweigh the votes of the other members. The Prophet (SA) acted as a human being: "Say, 'I am only a man like you.'¹" He did not govern the society with the help of his knowledge of the hidden (Ilm ul Ghayb), since if he did, he would not set an example [of an ordinary human being] for others: "In deed, you have, in the Messenger of Allah, an excellent pattern"². To set an example for others, he needed to move ahead as a human being [without extraordinary powers].

Thus, in governing the society, collective

1- The Quran: 18: 110

2- The Quran: 33: 21

wisdom is respected, just as Imam Khomeini said, “People’s vote is the criterion”¹.

The Universal Declaration of Human Rights is the outcome of humankind’s understanding of the generalities of human rights. As one who believes in the divine revelation and prescription of human rights, I should use my knowledge and thoughts to examine the conformity of such man-made sets of rights with the divine revelation, and then, accept the parts that conform and reject the ones that do not. In Western civil laws, for instance, men and women inherit equal shares of the legacy of a deceased member of the family; or, in the Universal Declaration of Human Rights, both men and women have the right to divorce a spouse². In Islamic law, however, we have different approaches to these issues. In Islam, too, women are entitled to study, become ministers, and generally benefit from all social and executive positions and opportunities, and there is no difference of rights between men and women in these respects. The problem is

1- Imam Khomeini’s Sahifa: 8: 173

2- “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” The Universal Declaration of Human Rights; Article 16, Paragraph 1

that we do not spend enough time on studying and analyzing the Human Rights Declaration and ignorantly deny all of it while, in fact, we should see where it is against our rules. For example, I believe Islam and the Declaration share the same approach to the issue of blood money. In our jurisprudence, human lives are valued equally and all human beings enjoy civil rights. Religion, race, color, appearance, geography etc. do not interfere in human rights. With regard to inheritance, what our jurisprudential criteria prescribe is the same as that which comes in Western laws. However, it should be noted that inheritance is affected by social conditions. In Iran, for instance, it may be viewed differently. I talked about it to some people from the West and they were convinced. Islamic traditions (Ahadith) explain why a weak woman has a smaller share of inheritance than a man. A woman inherits a smaller share since obligations such as jihad, payment of living expenses (nafaqah), and payment of compensation for the injuries and losses caused by her kin are not imposed on her by the Sharia¹. A godly and believing servant who believes that all general rules and

1- Al Kāfee:7:84; hadith 1; Wasāil al Shia:26:93: Chapter 2: hadiths 1, 2, and 3.

rights have been specified by divine revelation would not accept something approved by collective wisdom but disapproved by revelation. However, if God has not prescribed the dos and don'ts of something, and, on the other hand, He has ordered that all people's rights should be respected, then human beings are allowed to specify some rights like copyright which is also supported by the general principle that nobody is allowed to take possession of others' property or anything of value without their consent¹. So, whatever is deemed by people to be a right, which is not against the Sharia, will be subject to the same general principle and should be respected. Even our pioneers have endorsed such cases. It was just in one case where Imam Khomeini did not endorse copyright when he was in Najaf².

Nevertheless, I cannot accept any part of the Human Rights Declaration that is expressly against the revelation, and those who drafted it should allow me to disagree. I would disagree because I believe it is the revelation that

1- Awālee Al Li'ālee:3:473: hadith 3; for more information, also see hadiths 1, 2, and 4; Wasāil al Shi'ah:5:120, Abwāb Makān al Musallā, Chapter 3, hadiths 1, 3, and 14; Wasāil al Shi'ah:14:572, Abwāb al Mazār, Chapter 90, hadith 2

2- Tahreer al Waseelah cited in Ayatollah Saanei's Commentary on Tahreer al Waseelah:2:656

specifies the rights. That which resolves the problem to some extent is that there are only a few or no exceptions in the Declaration. Nevertheless, any exception should be dealt with and responded to.

There is another problem with the Declaration. It binds all humankind to obey it irrespective of their beliefs, faiths, and local laws.

Interviewer:

So, we conclude that wherever collective wisdom is not expressly against divine revelation, there is no problem with it and is deemed valid. Is that right?

The Ayatollah:

Yes, it is.

Interviewer:

What about their cases of contradiction and disagreement?

The Ayatollah:

Our priority is revelation. Even the Human Rights Declaration should allow for this prioritization. The Declaration should not impose anything on me. Please note that the Declaration should entitle me to the rights that I have been given by the divine revelation I believe in. If the declaration imposes anything on me

against my beliefs, it will violate my rights. I think human rights should be approached from my viewpoint. Let me give you an example: Nearly seven or eight years ago, somebody took a group of American Sunnite scholars here. We discussed some issues and they said they had really enjoyed the discussions. However, I believe it will take a long time for humankind to reach that level of tolerance and capacity.

Throughout the Quran, there is talk of Kafir, i.e. unbeliever. Take the example of this verse: “And never will Allah give the unbelievers a way over the believers¹.” Literally, this verse means that there is no way for an unbeliever over a believer. No unbeliever should dominate a believer. No unbeliever should become a military commander, a minister, or an emir in a Muslim state. Literally, the word kufur means “to conceal²”. To conceal something, one should first know it. If one does not know

1- “These are the ones who wait and watch about you: if ye do gain a victory from Allah, they say, ‘Were we not with you?’ But if the unbelievers gain a success, they say [to them], ‘Did we not gain an advantage over you, and did we not guard you from the believers?’ But Allah will judge betwixt you on the Day of Judgment. And never will Allah grant to the unbelievers a way (to triumph) over the believers.” The Quran:4:141.

2-Al Munjid:2:1600: كفر

something, then concealing it would not make sense. On the other hand, wherever there is talk of kafir in the Quran, there is also talk of punishment and hell¹. Which kafir is meant? Is it the knower or the one who does not know? If one does not know, then they cannot be punished². Therefore, kafir is one who knows the truth but moves against it and is hostile towards it. Let us assume that Islam has deprived such a person of some of their rights. This is not a human rights problem. If such a person denies Islam despite knowing that it is the true religion, and spreads anti-Islamic propaganda, they cannot expect to be given the same opportunities and rights as those given to Muslims.

If you translate kufur the way we do, many problems will be resolved since among the seven billion population of the present world, very few people would be kafir. A person from the remote parts of Africa who believes in the Mother Nature instead of God is not a kafir but a non-Muslim, and the righteous of their fellow believers will go to heaven because they

1- The Quran:2:257; the Quran:41:27; the Quran:38:27; and ...

2- The Quran:17:15; for more information, see Wasāil al Shi’ah:15:369, Abwāb Jihad al Nafs wa Mā Yunasibahu, Chapter 56

are ignorant of the truth. They do not deny the truth knowingly. There remain the very few hostile unbelievers whom Islam deprives of some rights. We cannot treat all non-Muslims like hostile unbelievers. We cannot deprive an ignorant unbeliever, who has not committed any crimes, of their rights while we grant human rights to a Muslim who has committed many crimes.

Interviewer:

Do you think you owe this method to Jawāhiri Jurisprudence?

The Ayatollah:

I have acquired it based on the same foundations. Islam never prioritizes the wisdom of one person, even the Prophet (SA), over that of the others'. When it comes to passing the law of God, it is He Himself who should do it since He is the one for it. He is the only one who deals with it. A mujtahid (religious authority)'s jurisprudential deductions are respected by he himself and his followers. But when it comes to executive matters, his vote is equal to those of others. His vote would not be prioritized over those of others because of his scientific or scholarly status.

Interviewer:

Thus, can we count collective wisdom as a source for jurisprudence?

The Ayatollah:

It is not necessary to count collective wisdom as a jurisprudential source. The generalities are there. Along with other proof, collective wisdom can help us build up our understanding. Let us discuss the issue of usury from the perspectives of Jawāhiri Jurisprudence¹ and that of Imam Khomeini's². Usury has strongly been declared harām by Islam. It is always being discussed by Muslims everywhere and they wish to establish a usury-free banking system. On the other hand, there are some fuqaha (Islamic authorities) like the author of Jawāhir who believe that this Islamic ban on usury can be fixed through some tricks³. For instance, I lend you X dollars and ask you to return X+Y dollars in such a way that you return X dollars to pay the original debt and Y dollars as the price of, for instance, a box of matches which I give you along with the X

1- Jawāhir al Kalam:23:332

2- Tahreer al Waseelah cited in Ayatollah Saanei's Commentary on Tahreer al Waseelah:1:525

3- Sharāi' al Islam:2:41-42; Masālik al Afhām:3:332; Mafātih al Sharāi':3:64; Jawāhir al Kalām:23:391-397

dollars. When Imam Khomeini was in Qom, he supported usury trick. I remember once Mr. Heydari Nahavandi asked Imam Khomeini why he deemed usury halāl (permitted) through such tricks. “Do you think that just miserable old women may be in need for usury money? That is not the only case. Businesspersons, too, need this usury money to increase their investments, and it is permitted for them through such tricks,” answered the late Imam. However, when Imam Khomeini moved to Najaf, he completely changed his stance, and said that such tricks were not correct at all¹. This is what we mean by applying wisdom and reflection to jurisprudence. He said, “It does not make sense that Islam forbids usury so strongly as to declare receiving a penny of the interest to be worse than committing seventy cases of incest while deeming it permissible in some other way². If this is the case, then everybody will declare usury permissible. Why would they not use the tricks to do so? This is why, it is necessary to forbid

1- Kitāb al Bay’:2:403-418 and 528-532; Tahreer al Waseelah cited in Ayatollah Saanei’s Commentary on Tahreer al Waseelah:1:527 (Issue 7)

2- A quotation from Imam Sadiq (AS), Wasāil al Shia:18:117, Abwāb al Riba, Chapter 1, hadith 1; for more information, see also hadiths 5, 6, 12, 18, 19, and 20.

such tricks.” This is where thought and wisdom should be applied.

The other point I have made recently is that Islam has forbidden usury because it is an injustice done to society; it decreases activity and productivity in society and causes one party to become richer and the other poorer day by day¹. However, if I am a businessman who wants to make a 150,000 dollar investment but only has 100,000 dollars himself. I know a friend who has 50,000 dollars savings. I ask this friend of mine to give me their savings as part of the investment whose entire profit and loss I will be responsible for, and in return, I will pay them a fixed annual percentage. Is there any injustice in this done to me or my friend? Not at all! Both my friend’s money and my business start to work. Thus, I believe that the interest paid on money borrowed for living expenses and payment of one’s debts is forbidden while the one paid on money that is invested in economic production is not. Governments should control the cases and prevent the former and no justification can fix it.

They have developed different frameworks

1- Mohammad ibn Sinān quoting Imam Rida (AS), Wasāil al Shia:18:121, Abwāb al Riba, Chapter 1, hadith 11; for more information, see also the other hadiths in this chapter.

like Ju'āla, civil partnership, and Mudāribah for attracting people's savings. Now, let us assume that Islam rules the world and there is Islamic banking system everywhere. Would it be practical to introduce such frameworks to the people all over the world? Neither the banker nor the client would understand what they are talking about! They would make fun of us and our system! The late Mr. Vahid Behbahani believed that it is just a change of title; you call it Ju'ālah or civil partnership but it is still usury by nature. It has the same yields!¹ To fix this, my proposed solution suffices; the money lent to a businessperson counts as an investment and the interest earned on it is halāl². It is not usury and does not do any harm and injustice to any of the parties. Therefore, I believe that all bank interests are permissible and halāl, and that you can come to the same conclusion by analyzing the relevant traditions (hadiths).

Interviewer:

The Human Rights Declaration is based upon the fundamental principle that human beings have such rights simply because they are hu-

1- Al Hāshiat alā Majma' al Fā'idat wal Burhān, p. 289

2- The Quran:2:275; the Quran:3:130; the Quran:4:160-161; for more information, see also Wasāil al Shia:18:117, Abwāb al Riba, chapter 1.

man beings. Our jurisprudential literature, however, apparently gives human beings more of obligations rather than rights. It seems that jurisprudence does not give any rights to human beings because they are human beings. What is your comment on this?

The Ayatollah:

No, that is not the case. It is true that, in many cases, they have resorted to the proof and their understanding has somehow been manifested in obligations. Nevertheless, they are human-based too.

Interviewer:

Could we say that jurisprudence is basically after the determination of obligations?

The Ayatollah:

No. I disagree. Jurisprudence has also been after the definition of rights but they either could not explain it or were not questioned. Killing a human being¹ or violation of others' rights, for instance, are among the biggest sins. These are human rights and they have defined them. Oppression is the violation of people's rights. An oppressor, an aide to an oppressor, and the one who consents to oppression are all sinners

1- The Quran:5:32; for more information, see also Wasāil al Shia:29:9, Abwāb al Qisās fil Nafs, chapter 1.

and partners in crime. It means that from the heart of the one who consents to oppression and is happy about it¹ to any external action that is done by the oppressor or their aide are considered. How better could people's rights be defined? That is, if Islam were to develop a culture, it should be in such a way that no one would like oppression or help the oppressors. Do we have any similar case of such careful consideration in the Human Rights Declaration?

Interviewer:

Even in the cases you mentioned, the tone is more of a decree issuing authority decreeing that oppression is against divine law and imposing punishment on them. Is that right?

The Ayatollah:

Well, it means that oppression is sinful and haram.

Interviewer:

But the rights specified in the Human Rights Declaration are apparently...

The Ayatollah:

The Declaration also says the same thing. The

1- A quotation from Imam Sadiq (AS), *Al Kāfee*:2:32, *Bāb al Dulm*, hadith 16; *Wasāil al Shia*:16:55, *Abwāb Jihād al Nafs*, chapter 80, hadith 10.

problem with the Declaration is that it does not have an enforcement guarantee while jurisprudence does. Jurisprudence says it is a sin so it should be prevented while the declaration just defines it. All the Declaration does is issuing resolutions. In Islam, when somebody commits a harām act, it means they have committed a sin which should be stopped, and for which they should be blamed and punished.

Interviewer:

Do you mean that in the Shiite jurisprudence, too, human beings have rights just because they are humans?

The Ayatollah:

Yes, I do. Human beings are respected in Islam¹. I believe all that humans have rights irrespective of their race, color, etc². All human beings are the same³.

Interviewer:

Another issue is that the Human Rights Declaration is based upon more fundamental thoughts like humanism and the independence of politics from religion. What is your com-

1- The Quran:17:70

2- The Quran:49:13; see also *Bihār al Anwār*:22:348, hadiths 64 and 76, and 22:350, hadiths 13 and 78, and 22:250, hadith 108.

3- The Quran:23:14

ment?

The Ayatollah:

They are wrong. From one perspective, religion and politics are of the same subject matter. Politics is the management of the affairs of society. When we say that Islam and politics are of the same subject matters, we mean that it has plans and laws for the affairs of society. It has defined the rights of neighbors, civilians, friends etc. It has business law, penal law, and civil law. It has rules for communicating with God, which is a civil relationship itself since Islam recommends that prayers be performed in congregation; that is, it encourages unity. I believe that Islamic laws can save the society and manage its affairs. This means that Islam and politics are of the same subject matter. However, if by this unity of religion and politics, a religious authority means that whatever they order should be obeyed, it will not be Islamic at all. Not even the Prophet Himself (SA) ruled like that. Imam Khomeini said, "People's vote is the criterion¹." Management of the affairs of society is upon people. Our Constitution has it that people have sovereignty over their affairs.² As a religious

1- Imam Khomeini's Sahifah:8:173

2- Footnote under Principle 56 of the Iranian Constitution

authority, I should not abuse the power resulting from this unity of religion and politics to call human rights defenders or the opposition hostile unbelievers who should be silenced by armed forces in which case the society will end up with despotism.

Interviewer:

Let me go back to my previous question. Do you agree that humans have rights given by the Creator just because they are humans and such rights cannot be taken away by God, denied, or refused?

The Ayatollah:

Yes, I do. God himself has given His right of sovereignty as well as other rights to humans and cannot take revoke them since it would be injustice.

Interviewer:

So, can we say that this divine origin makes the difference between Islamic human rights and Western human rights?

The Ayatollah:

Yes, we can. The former has an enforcement guarantee while the latter does not have it. Islamic human rights come from the revelations of a being attending to whom makes human

beings respect them. One set of such enforcement guarantees is the obligations you mentioned earlier. The other one is obeying laws and respecting the rights of human beings in appreciation of such rights bestowed upon them by God.

Interviewer:

What is your view of justice and injustice considering the fact that the world's wise's understanding of these terms is changing?

The Ayatollah:

Whatever is against justice should be ignored because the Quran orders us to administer justice¹. The traditions (hadiths) which are against the Quran should be ignored. If, one day, we find that they are not against justice, we can bring them back. It is no big deal! But the very general rule that anything against justice and the Quran is invalid and worthless remains there. If you come across a hadith which is against justice or the Quran, there must be something wrong with it. It is either a fake hadith, a wrong one, one which has not been passed to us properly, or one which we have always misunderstood. In any of these cases, we cannot rely on it. Therefore, I would

1- The Quran:5:8

prefer to ignore it. If, however, one day human beings conclude that it absolute justice, it will be returned.

Interviewer:

Do you mean that the definition of justice and specification of its instances is upon collective wisdom?

The Ayatollah:

Yes, it is.

Interviewer:

For instance, would you have issued a fatwa that women's blood money is half that of men's a few years ago?

The Ayatollah:

Yes, I would have issued the fatwa in that way.

Interviewer:

Do you confirm that time and space matter?

The Ayatollah:

Yes, I do. Such problems did not exist in the past, and, therefore, they did not pay attention to them.

Interviewer:

Could this also apply to the issue of justice and injustice?

The Ayatollah:

Sure, it could. According to Imam Khomeini, time and space matter in Ijtihād¹. In other words, it is the collective wisdom that decides whether something is against justice or not.

Interviewer:

Do you believe that holy texts like the traditions (hadiths) of the Infallible (AS) are limited to their history or eternal? I mean, are they fixed and constant principles?

The Ayatollah:

The principles are fixed and unchanging. It is, in fact, our understanding and inference that changes. For instance, we have some traditions (hadiths) on kafir. One infers from the traditions that all non-Muslims are kafir. Another more exact understanding says that non-Muslims are non-Muslim but not necessarily kafir. To give you another example, one's understanding of the verse 221 of the Chapter Baqarah of the Quran might be that Muslims should not marry their daughters to polytheists. I would not issue a general fatwa on this. Of course, if a polytheist is purposefully marrying a Muslim woman so that later he can deceive her into becoming a polythe-

1- Imam Khomeini's Sahifah:21:217-289

ist like him, it will not be permissible. But today's marriages are not like that, are they? Couples live together peacefully despite their different faiths and beliefs. If this is the case, it will be permissible for them to marry. Moreover, polytheists are very rare today. How many people do you know these days, who worship God and someone else at the same time?! Thus, this is a jurisprudential method.

Interviewer:

Based on what you said, there are two different understandings from one single verse, and you consider yours to be more precise. Some people say that this verse is historic in the sense that the decree in this verse applies to the time of the Prophet (SA) and its circumstances. What is your comment on this?

The Ayatollah:

They are wrong. They cannot say so since Quranic verses are eternal: "We have not sent thee but as a universal (Messenger) to men, giving them glad tidings, and warning them (against sins), but most men understand not¹." It might be true about a few specific cases but cannot be true about the general rules. For instance, the verses discussing slaves and slav-

1- The Quran:34:28

ery were applicable to that time but they are pointless today. However, if someday slavery becomes customary in the world again, the verses will be applicable again. But it would definitely be wrong to say that these verses belonged to that time and would never be applicable ever after. This is a misunderstanding and mistaken inference since the Quran has come for all times not for a particular period. Nevertheless, we need to analyze and scrutinize the Quran more and more so that we can come up with the understanding that It does belong to all times and ages. When it comes to traditions and hadiths, however, we will find many of them case-specific, ephemeral, and inapplicable to other times. For example, when a woman claims that her husband has not given her the promised and undertaken marital gift (Mahr) while the husband claims that has done so, who is it that is required to provide proof and evidence in support of their claim?

Interviewer:

The Husband?

The Ayatollah:

No. It is not the husband. Our traditions have it that it is the wife who should provide

proof¹ and if she fails to do so, the man can bring an end to the case by swearing that he is telling the truth. This is against the rules but as Shahid al Awwal²- who, I believe, was martyred for his jurisprudential freethinking- has said that this way of judgment is peculiar to the time when marital gift was very often given to the wife on the day of marriage. Therefore, it was commonly counted as settled on the wedding day unless proven otherwise.

The Interviewer:

Is it a case of contradiction between a principle and literal meaning of the tradition?

The Ayatollah:

Here, the literal meaning of the tradition overrides the principle. The tradition belongs to those circumstances. It is not against the rules and principles when considered within its time and place, i.e. context.

Let me give you another example. At that time, it was customary that the woman bring some household items as dowry to her martial home. There were disputes as to who could be

¹- A quotation from Imam Sadiq (AS), Al Kāfee:5:386, Bāb Ikhtilāf al Zawj wal Mar'ati wa Ahliha fil Sidaq, hadith 4; Al Tahdheeb:7:376, hadith 1521; Al Istibsār:3:223, hadith 809; Wasā'il al Shi'ah:21:257, Abwāb al Muhur, bāb 8, hadith 7

²- Al Qawā'id wal Fawā'id:1:152

considered the owner of those items when the couple divorced. It was then argued that they belonged to the wife since she had brought them with her originally¹. Now, if some day it becomes customary for men to bring dowry when they get married, the tradition will come up again but in a different form. When we say that some hadiths were case-specific and ephemeral, we do not mean that they were applicable to a specific time and would no more applicable any time. Rather, we mean that the grounds for such traditions do not exist anymore, and that such grounds may someday be there again.

Interviewer:

My understanding of your comments is that considering the fact that Jawāhiri Jurisprudence knows human rights to be God-given while Western outlook knows such rights to be self-established and not given by God or brought by anyone, it seems that we have only two choices: we should either define human rights based on Islamic law or analyze and examine the Articles of the Human Rights

1- A quotation from Imam Sadiq (AS); Wasā'il al Shi'ah:26:213, Abwāb Mirāth al Azwāj, bāb 8, hadith 1; see also hadiths 4 and 5 of the same bāb; Rasā'il, Mirzāye Qomi:2:963-973; Mustanad al Shia:17:364, problem 9.

Declaration one by one based on our Islamic sources to see which is correct and which is incorrect. Am I right?

The Ayatollah:

There is no contradiction. We only differ about the origin of the rights. We believe that God has given us such rights while they say human beings have defined them themselves. We say that human rights should not be disarranged because they are God-given. God has bestowed such rights upon us because we are human beings. Any new human issue that we come across should be examined against divine human rights to see whether they conform or not. But they say we discovered human rights through wisdom. We say we do not see a problem with it being the outcome of human wisdom. But we need to examine them against the revelatory rights. Then, we will accept the ones that follow divine principles and also those which are not basically against revelatory rights, but leave out those which are against them.

Nevertheless, this difference of opinion on the origin does not affect the nature of human rights so much so that we totally reject one and accept the other. However, the human rights we believe in have the advantage of en-

forcement guarantee, whether through obligations or through personal beliefs and attitudes.

Interviewer:

As a faqih, you are very different from your predecessors. As far as I remember, you have two hundred fatwas that are different from those of your predecessors. Some fuqaha have proposed a theory and mechanism by which they can issue new fatwas today. They believe that only those laws can be Islamic that are rational and just, and have two other qualities. But you deduct each of your fatwas only from the relevant proof. Do you approve of their method?

The Ayatollah:

They, too, should do it the way I do.

Interviewer:

Is it possible that a mechanism and a golden rule be proposed for jurisprudential deduction based on Jawāhiri Jurisprudence?

The Ayatollah:

There cannot be a general rule. We cannot say, for instance, that it would suffice for the human rights we define to be just. We may consider something unjust while the Quran says it is just. We should follow the Quran in

determining what is just and what is not because we believe that Islamic laws are based on justice and reason. But we should examine the related proof. There might be something in the proof that I have not understood well or something I have never thought of.

Interviewer:

The point is that you have bothered to examine each and every issue and fatwa yourself.

The Ayatollah:

In fact, it should be so. There cannot be a general rule. No knowledge and science could be like that. You cannot resolve all medical problems with the help of a single general rule. You need to examine each case by itself and learn about it. Is it possible for an engineer to implement all plans based on one general foundation? No. different plans need different methods and approaches.

Interviewer:

To see whether or not a decree or fatwa- like women's blood money being half that of men's- is just, should we examine all its jurisprudential literature?

The Ayatollah:

Yes, we should. If the wise consider some-

thing just, then it is just.

Interviewer:

Should we ignore an issue like women's blood money being half that of men's simply on the grounds that the wise do not see it as just?

The Ayatollah:

If we see that such an issue has come in the traditions, we should firstly examine it through the Jawāhiri method so that we can make sure of its jurisprudential contemplation; otherwise, we would miss a great possibility for a careful and scholarly examination of the issue at hand. Secondly, there might be some points which, if paid attention to and conveyed to people, they would come to the conclusion that women's blood money being half that of men's is just. The relevant proof and arguments should be analyzed and examined. If, by doing this, we conclude that the traditions and proof confirm the decree but do not specify whether it is just or unjust, and then we ourselves see it unjust, we will reject it because it is against the Quran and wisdom.

Interviewer:

Thank you for your participation.

**An Interview with Grand Ayatollah Saanei
About**

**Traditional Jurisprudence
versus
Dynamic Jurisprudence**

Interviewers:

Farid Modarresi

Maryam Baghi

Prologue

In the heart of the religious city of Qom, a city of Islamic seminary schools home to the Shiite clergy, the office of a marja (Shiite authority) is the center of debate about dynamic jurisprudence versus traditional jurisprudence. This popular and most likable 70-year-old clergy, however, opts for both of them, and says, “Basically, dynamic jurisprudence and traditional jurisprudence are not against each other.” Nevertheless, some know grand Ayatollah Saanei to be a supporter of dynamic jurisprudence for which he faces criticism from his friends who once used to be his seminary school classmates. Now, he is a marja and they either teach in seminary schools at a lower level or have become politicians. They think that the views of this marja are not in compliance with those of the rightful seminary school predecessors.

But he says, “The ways of the rightful seminary school predecessors should be followed.” This saying of the Ayatollah, is proof of his jurisprudential outlook in his treatise of Islamic laws, and negates the comments of the critics. Anyway, Ayatollah Saanei supports issues that are rarely supported by other marjas: girl’s age of religious obligation being 13 years of age, equality of men’s and women’s blood money, permissibility of women’s becoming judges, leaders, and marjas etc. These novel views have made him a figure that supports the dynamic jurisprudence founded by the late Imam Khomeini.

That day¹, he was sitting in a chair in his small office room, reading a stone-printed book when we asked him to give an interview on dynamic *ijtihad*. The questions were asked one after another nonstop and challenged this marja, but soon the interview turned into a friendly chat and was no more a complicated, metaphorical, and abstract clerical conversation.

1- This interview was given in August, 2007, and published in the 41/11 issue of *Shahrvand Magazine*.

The Interview

Interviewer:

Dynamic jurisprudence was propounded after the Islamic Revolution and some related it to jurisprudential modernism. What are your definitions and understandings of dynamic jurisprudence and traditional jurisprudence?

The Ayatollah:

I seek refuge in God from the cursed Satan
 In the Name of God, the Most Beneficent, the
 Most Merciful
 Shiite jurisprudence has always been dynamic. Dynamism is the quality of being moving forward. Shiite jurisprudence explicates the divine law on people's day to day problems. Once it was all collected in the brief, nearly-twenty-page treatise of Ibn Bābiwayh. But today, it has been developed to thousands of jurisprudential books among which we can name the 42-volume *Jawāhir al Kalām*,

Hadā'iq, and those of Sheikh al Tā'ifah, Kashif al Ghitā, Allāmah, Muhaqiq, and many others, which could make a huge library without repeated books. This is what we mean by jurisprudential dynamism. Imam Rida (AS) is quoted as saying, "We are to introduce the principles and you are to express the derivatives and secondary matters¹."

One principle can be the origin of hundreds of secondary matters, and this is the foundation upon which jurisprudence is based. The Infallible Imams (AS) advised Muslims to ask the reliable people their questions on day to day matters: "Ask Zakaria bin Adam, the reliable in religion and life²." It is obvious that Zakaria did not access all the secondary rules through traditions (hadiths). No one is expected to be able to express the secondary rules the way the Infallible did. All that Zakaria had access to a set of principles. The Imam (AS) orders the questioner to go to Zakaria for explanation on the day-to-day instances and cases. Why Zakaria is introduced for such a purpose is because he is reliable in the matters of both religion and life. This is what we mean by dynamic jurisprudence. We have a lot of proof

1- Wasā'il al Shiah:27:62. Abwāb Sifāt al Qādi, Bāb 6, hadith 52

2- Ibid, Bāb 11, hadith 27

for it. The best person to quote on dynamic jurisprudence being a matter of all times ever since the time of the Infallibles (AS) is the late Imam Khomeini. In his discussion of “Ijtihād and Taqleed (Jurisprudential deduction and Being a Follower),” he provides a lot of proof that jurisprudential deduction has always been there, even at the time of the Infallible (AS). However, at their time, there were not many day-to-day cases to be dealt with because life matters and communication were very limited. But now, we face more and more cases every day. Imam Khomeini was the unique and the most thorough person in this century and even in the recent past centuries who actualized dynamic jurisprudence. After he was released from prison in 1964, Imam Khomeini started to collect, study, and deduce fatwas on the day-to-day issues ranging from the obligations imposed on those who go to the moon and Mars to those imposed on the parents of the children developed through plant-origin sperm. His dynamic jurisprudence is way ahead of the society’s knowledge. Society’s knowledge has not reached its heights yet and Imam Khomeini has issued the fatwas for it. This is jurisprudential dynamism to its perfection. It must be said that Imam’s jurispru-

dence was even more important than his fight against oppression and injustice since this fight was subject to time limit while his efforts for the development of dynamic jurisprudence started since the very first days of his activity in the seminary schools. By mentioning this, I mean that dynamic jurisprudence has been there from the time of the Infallible (AS) and will always be there forever. Basically, if seminary schools do not pay attention to dynamic jurisprudence, they will no more be seminary schools, and people will no more go to them to ask their religious questions. People expect a faqih to respond to their day-to-day religious questions and if a faqih fails to respond, either they are not a faqih or they are not equipped with dynamic jurisprudence. I see it very unlikely that a person who understands jurisprudence and knows themselves to be a faqih says they do not accept and believe in dynamic jurisprudence. Of course, one might say that they do not accept dynamic jurisprudence while, in fact, they mean they do not agree to some of the fatwas because they have been issued based on social intellectualism and open-mindedness. That is, they do not basically disagree with dynamic jurisprudence but with some of the fatwas, which itself is based

on their lack of sufficient knowledge of the issues. But it is impossible that a faqih who is familiar with the tone and language of the Ahl ul Bayt (the People of the House) (AS) and recites the sentence, “Through You God taught us the characteristics of our religion,”¹ says that jurisprudence is static. Shi’ism strictly disagrees with a closed and confined version of jurisprudence, and believes that it should be open to further development.

Interviewer:

Do you mean that jurisprudence has been dynamic ever since the start of Shi’ism?

The Ayatollah:

I would go further. I believe it has been dynamic since the time of the Prophet (SA).

Interviewer:

Then, why did Imam Khomeini’s disciples propose it after the Islamic Revolution, and consider it an alternative to traditional jurisprudence?

The Ayatollah:

Imam Khomeini believed in both. He always told us to base ourselves on dynamic jurisprudence but to maintain the method of the

1- Mafātih al Jinān, Jami’at al Kabirah Supplication

author of Jawāhir. Dynamic and traditional schools of jurisprudence are not against each other. Traditional jurisprudence is the method of jurisprudential deduction which should be maintained in Islamic seminary schools. But when asked how much an amount of water on the moon should weigh to be kurr, we cannot respond “200 and something kilos.” We should say there is no such a thing as weight on the moon. The weight we know for that amount of water to be kurr is peculiar to it on the Earth and cannot be generalized to it everywhere and on every planet. This is not jurisprudence. It is rigidity.

Interviewer:

Based on what you just said, our fuqaha (Islamic authorities) have always believed in both traditional and dynamic jurisprudence. Is that right?

The Ayatollah:

Yes, it is. But there is a difference between the past and the present in this regard, and that is society’s capacity for accepting the novel fatwas and views. At times, a faqih’s understanding of the religious texts and sources responds to society’s circumstances and resolves the problems but society does not have

the capacity to accept it. People in the past were not as open to novel issues as they are today. This is up to the understanding of the faqih themselves to decide whether the society will be persuaded to accept the novel fatwas or not. So, jurisprudential dynamism has always been there but fuqaha may have refrained from introducing their novel views due to society's lack of capacity. Let me give you an example. If, today, a faqih issues the fatwa that a woman cannot leave her marital home without her husband's consent, and that if she does so, as soon as she steps out of the home, the leg of hers that is out of the house will be against the Sharia and the one inside will be in compliance with it, how would you judge his fatwa? Do you think that today's society would accept this? No, it would not. But this same fatwa has long been accepted by Muslims throughout the history of Islam.

Interviewer:

Is this traditional jurisprudence?

The Ayatollah:

No, it is not. This is a mistaken inference.

Interviewer:

What can we call a faqih who has such an in-

ference?

The Ayatollah:

You call him a faqih. However, it is the people who should avoid following this fatwa and go to a more learned and more reliable faqih who issues convincing fatwas.

Interviewer:

Do you mean that there are no two different schools of jurisprudence, one being dynamic and the other traditional?

The Ayatollah:

No, we do not have such schools in that sense.

Interviewer:

Then, do you believe that a faqih who issues particular fatwas on women, which some dislike can be excused?

The Ayatollah:

If the faqih is just and has deduced the fatwas from the relevant hadiths, he can be excused.

Interviewer:

Do you mean we do not have any such approaches as dynamic jurisprudence and traditional jurisprudence?

The Ayatollah:

Not as two distinct things parallel to each oth-

er. They are the same thing by nature. It is the same jurisprudence with the same methods but with different deductions and inferences. For example, we have a tradition (hadith) that says when a woman leaves marital home without her husband's consent, angels curse her until she gets back home. Now, we ask a faqih whether women are allowed to leave marital home without her husband's consent. They use the same tradition as proof for its impermissibility and issues the fatwa that it is haram (forbidden) for a woman to leave marital home without her husband's permission. Another faqih, however, may use the same tradition to issue the fatwa that the literal meaning of the hadith has not been meant, and, in fact, by leaving marital home, leaving due to some sort of disagreement or quarrel has been meant. In that sense, leaving marital home will be more acceptable to society, and women's human dignity will be preserved because women are not seen as slaves, and are equal with men in all human and social rights.

Interviewer:

Then, based on your remarks, if fuqaha enjoy acceptability in society, they will certainly be dynamic. Am I right?

The Ayatollah:

Yes, you are. Imam Khomeini was a good example. Despite the fact that no radio or television announced his becoming a marja, and many disagreed with it, and he was not supposed to become popular in seminary schools, he became the most popular marja and the society followed him. He issued two revolutionary fatwas: one of them said that if a person drills a well in their house and discovers oil, the oil well will be a public property. Those who opposed it wrote a letter to say that Imam Khomeini had dishonored Sheikh Ansāri and the author of Jawāhir.

The other fatwa was that playing chess as an entertainment is permissible as long it does not include gambling.

Imam Khomeini once said that Islam needs those who are prepared to sacrifice their honor for it in the explication of its rules. If, today, a faqih like me can express his views and the enmities towards him do not get anywhere, it is because of society's awareness and capacity. Society accepts my fatwa that women are human beings and therefore their blood money is equal with that of men's. Of course, we follow the Quran, the tradition (hadiths), and our understandings of them.

Interviewer:

Based on your views, I conclude that dynamic jurisprudence involves politics. The example of the oil well, or the assertion that dynamic jurisprudence deals with whatever people demand support my conclusion. On the other hand, traditional jurisprudence enjoys less social acceptability.

The Ayatollah:

We cannot say that traditional jurisprudence is not dynamic. It is dynamic but it does not have the capacity to answer all of today's needs and questions. By dynamic jurisprudence, we mean the jurisprudence that responds to people's needs using the same methods. It is always responsive. It does not remain silent on an issue because there is no hadith on it. Obviously, the deductions and inferences are different. One may be accepted and welcomed by society and one may not.

Interviewer:

So, you basically consider dynamic jurisprudence present and working in all areas, and do not know any faqih to be supporting non-dynamic jurisprudence. Is that right?

The Ayatollah:

No just faqih would ever believe in non-dy-

amic jurisprudence; of course, this only applies to a faqih whom society accepts and recognizes as a real faqih.

Interviewer:

Do you mean that the criticisms leveled at your views or at those of Imam Khomeini's in the seminary schools have not been based on a traditional jurisprudence/dynamic jurisprudence dichotomy and arising out of traditional jurisprudence?

The Ayatollah:

You should not mix jealousy, enmity, and politics with scientific discussions. Those who disagreed with Imam Khomeini's fatwas did so. The late Ayatollah Feyz once issued a fatwa that music is not haram (forbidden) in essence; rather, it can be haram in content. That is, if music does not include contents that would lead people astray, for instance, the music composed to encourage people to join the fight against their enemy or to teach them about health, is not haram. The late Ayatollah Feyz was excommunicated from the seminary school for this fatwa. That was a wrong treatment. If a faqih finds another's fatwa wrong, they should discuss it with them. Basically, this is what seminary schools are for. Just like

in universities, in seminary schools too, such discussions are free and open. At times, you need to study, analyze, and discuss hundreds of hadiths and arguments to draw a conclusion on an issue.

Interviewer:

Is the dynamic jurisprudence that you support intertwined with society's demands? Do jurisprudential views have to match people's demands?

The Ayatollah:

Not people's demands but their questions. Fuqaha issue their fatwas based on their deductions. People may or may not like those fatwas but fuqaha cannot bias them towards what people like.

Interviewer:

Do you mean that a faqih may issue different fatwas on an issue by reviewing the texts at different times?

The Ayatollah:

Yes, I do. A faqih may issue different fatwas on a given problem at different times. The late Allamah and Sheikh Toosi have different views in their different books. I do not want to compare myself to such big figures, but I have

also had cases of different views on the same issue during the past years.

Interviewer:

If you believe that all fuqaha believe in dynamic jurisprudence, then how can we interpret the disagreements?

The Ayatollah:

All you can find in seminary schools is dynamic jurisprudence. There might be political problems like when a faqih is a Marxist. There might be problems of qualification like when a faqih is not knowledgeable or learned enough. Nevertheless, jurisprudence and seminary schools minus dynamism will leave behind no jurisprudence.

Interviewer:

Can we say that fuqaha like you, who know women's and men's blood money to be equal, which is intertwined with the need of a part of society, believe in dynamic jurisprudence more than others do?

The Ayatollah:

Both the supporters and opponents of this fatwa are fuqaha who deduce their views from the relevant sources. No one can blame them for their understanding and inference.

Interviewer:

In your discussion of dynamic jurisprudence, you always cite Imam Khomeini's fatwa as an example of jurisprudential dynamism. Do you consider him the only dynamic faqih?

The Ayatollah:

No, I don't. There were dynamic fuqaha among his predecessors. All fuqaha are dynamic. All fuqaha have been free-thinking and just Islamic authorities who issued their own fatwas.

Interviewer:

Then, what is the difference between a faqih that does not respond to today's needs and one who does. Can we say that the former supports traditional jurisprudence while the latter supports the dynamic?

The Ayatollah:

Every faqih responds to the needs of society. The point is that the view of one faqih might be accepted and followed by people while that of another might not. It is the society that decides which to choose and follow.

Interviewer:

But it seems that dynamic jurisprudence be-

came more widespread and common after the time of Imam Khomeini. Am I right?

The Ayatollah:

No. The late Imam discussed it too.

Interviewer:

To sum up, what is your definition of dynamic jurisprudence?

The Ayatollah:

Dynamic jurisprudence is the jurisprudence that responds to people's questions and needs from the viewpoint of divine law.

Interviewer:

With this definition, all marjas will be the supporters of dynamic jurisprudence in the sense that they all respond to people's needs and questions. However, their responses may or may not be consistent with what people desire and accept.

The Ayatollah:

The point is that people cannot bias the views of fuqaha toward what they like or prefer, and that their desire or preference does not affect fuqaha's deductions. Fuqaha make their deductions no matter what people opt for. People may or may not find those deductions consistent with their desires.

Interviewer:

What are the responsibilities of a faqih? Do fuqaha only issue fatwas on people's religious questions or do they also respond to their questions on other matters?

The Ayatollah:

A faqih is responsible for people's religious questions.

Interviewer:

Then, who should answer people's political and social questions?

The Ayatollah:

Practicing jurisprudence, Fuqaha can just discuss and specify the generalities of socio-political matters with people. However, they are not supposed to implement those generalities. They are not administrative authorities.

Interviewer:

Then, why do some consider fuqaha administrative authorities? Does this not interfere with their main responsibility?

The Ayatollah:

A faqih may become an administrative authority owing to their wilāyah (guardianship) but not to their fiqāhah (practicing faqih). They can also become judges. But as far as juris-

prudential practice is concerned, they can just deal with the generalities I mentioned earlier.

Interviewer:

Becoming a faqih is realized after a long course of seminary school studies. But where does that wilāyah come from?

The Ayatollah:

Based upon the theory of Wilāyat al Faqih (guardianship of the Islamic jurist), all fuqaha have that wilāyah (i.e. authority) and are allowed to involve in society's administrative affairs.

Interviewer:

Do you mean that it is one of fuqaha's responsibilities to involve in society's administrative affairs?

The Ayatollah:

No. I think you confuse the matter. Let me give you an example. Once, I was the General Prosecutor. In that position, I always signed my name as the General Prosecutor under the letters. In the cases of personal or religious letters, however, I always signed my name only. When you become a faqih, you automatically become a judge, and qualify for wilāyah (i.e. authority to hold administrative positions).

Of course, to enter any of the administrative fields, they should study and learn the requirements. If, for instance, they want to occupy a political position, they should study politics and begin to communicate with politicians. They do not qualify for such positions just because they have had seminary studies. Seminary school studies have nothing to do with administrative affairs. They are authorized (i.e. have the wilāyah) to involve in administrative affairs but only after they have satisfied the specialized requirements, have advisors, learn about society's issues, and read the newspapers. This is exactly what Imam Khomeini was like.

Interviewer:

Then, based on your view, wilāyah is part of a faqih's responsibilities and roles. Is that right?

The Ayatollah:

Yes, you are. It is among their responsibilities. It is like a capability and talent. When they are required to practice that wilāyah, they should go and prepare for it. They should acquire the specialized knowledge. Then, they can become an administrator as well.

Interviewer:

Thank you for your time.

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The noble religion of Islam and the Holy Qur'an have provided us with the general and comprehensive principles that we need for the management of society. These fixed principles are based upon justice and the negation of injustice, and are for all times and ages. A faqih uses these principles to deduce the religious laws and rules, and to explicate the Islamic Jurisprudence.

The forward-thinking Shiite faqih, Grand Ayatollah Saanei, too, relying on these principles, a thorough understanding of the traditions (hadiths), rationality, and principles like "Human rights and dignity", "easiness of Islamic rules", "justice and negation of injustice" etc., has actualized the comprehensiveness of jurisprudence in responding to the needs of today's world.

Reflection Series 1

Dynamic Ijtihād

**From the Viewpoint of the Faqih of
the People of the House of Purity and Infallibility (AS)**

Grand Ayatollah Saanei

Fiqh al Thaqaalayn Publications