IN THE NAME OF ALLAH,
THE ALL-BENEFICENT, THE ALL-MERCIFUL

قال الله تعالى:

ڎ ڈ ڈ ژ ژ ڑ ڑ ک ک ک

Indeed, Allah desires to repel all impurity from you, O People of the Household, and purify you with a thorough purification.
(*Sūrat al-Aḥzāb* 33:33).

Prophetic traditions, mentioned in most reliable Sunnī and Shī‘īte reference books of *ḥadīth* and *tafsīr* (Qur’anic Exegesis), confirm that this holy verse was revealed to exclusively involve the five People of the Cloak; namely, Muḥammad, ‘Alī, Fāṭimah, al-Ḥasan, and al-Ḥusayn, peace be upon them, to whom the term ‘Ahl al-Bayt (People of the House)’ is solely dedicated.

For instance, refer to the following references:

(1) Aḥmad ibn Ḥanbal (d. 241 AH), *al-Musnad*, 1:331; 4:107; 6:292, 304. (2) *Ṣaḥīḥ Muslim* (d. 261 AH), 7:130. (3) At-Tirmidhī (d. 279 AH), *Sunan*, 5:361 et al. (4) Ad-Dūlābī (d. 310 AH), *adh-Dhurriyyah aṭ-Ṭāhirah an-Nabawiyyah*, p. 108. (5) An-Nassā’ī (d. 303 AH), *as-Sunan al-Kubrā’*, 5: p. 108, 113. (6) Al-Ḥākim an-Naysābūrī (d. 405 AH), *al-Mustadrak ‘ala’ṣ-Ṣaḥīḥayn*, 2:416, 3:133, 146, 147. (7) Az-Zarkāshī (d. 794 AH), *al-Burhān*, p. 197. (8) Ibn Hājar al-Asqalānī (d. 852), *Fatḥ al-Barī Sharḥ Ṣaḥīḥ al-Bukhārī*, 7:104.

As for Shī‘īte reference books of *ḥadīth*, refer to the following references:

(1) Al-Kulaynī (d. 328 AH), *Uṣūl al-Kāfī*, 1:287. (2) Ibn Babawayh (d. 329 AH), *al-Imāmah wa’t-Tabṣirah*, p. 47, Ḥ. 29. (3) Al-Maghribī (d. 363 AH), *Da’ā’im al-Islām*, pp. 35, 37. (4) Aṣ-Ṣadūq (d. 381 AH), *al-Khiṣāl*, pp. 403, 550. (5) Aṭ-Ṭūsī (d. 460 AH), *al-Amālī*, Ḥ. 438, 482, 783.

For more details, refer to the exegesis of the holy verse involved in the following reference books of *tafsīr*: (1) Aṭ-Ṭabarī (d. 310 AH), *Book of Tafsīr*. (2) Al-Jassāss (d. 370 AH), *Aḥkām al-Qur’ān*. (3) Al-Waḥīdī (d. 468 AH), *Asbāb an-Nuzūl*. (4) Ibn al-Jawzī (d. 597 AH), *Zād al-Maṣīr*. (5) Al-Qurṭubī (d. 671 AH), *al-Jāmi‘ li-Aḥkām al-Qur’ān*. (6) Ibn Kathīr (d. 774 AH), *Book of Tafsīr*. (7) Ath-Tha’ālibī (d. 825 AH), *Book of Tafsīr*. (8) As-Suyūtī (d. 911 AH), *ad-Durr al-Manthūr*. (9) Ash-Shawkanī (d. 1250 AH), *Fatḥ al-Qadīr*. (10) Al-‘Ayyāshī (d. 320 AH), *Book of Tafsīr*. (11) Al-Qummī (d. 329 AH), *Book of Tafsīr*. (12) Furṭ al-Kūfī (d. 352 AH), *Book of Tafsīr*; in the margin of the exegesis of verse 4:59. (13) At-Tabrisī (d. 560 AH), *Majma‘ al-Bayān*, as well as many other reference books of *ḥadīth* and *tafsīr*.

A Cursory Glance at the Theory of *Wilāyat al-Faqīh*

قَالَ رَسُولُ اللهِ:

إِنِّي تَارِكٌ فِيكُمُ الثَّقَلَيْنِ: كِتَابَ اللهِ وَعِتْرَتِي أَهْلَ بَيْتِي، مَا إِنْ تَمَسَّكْتُمْ بِهِمَا لَنْ تَضِلُّوا بَعْدِي أَبَداً، وَإِنَّهُمَا لَنْ يَفْتَرِقَا حَتَّى يَرِدَا عَلَيَّ الْحَوْضَ.

The Messenger of Allah ( ) said:

"Verily, I am leaving among you two weighty things [*thaqalayn*]: The Book of Allah and my progeny [*'itrat*], the members of my Household [*Ahl al-Bayt*]. If you hold fast to them, you shall never go astray. These two will never separate from each other until they meet me at the Pond [*aw*] (of *Kawthar*)."

Some references:

- Al- ākim al-Nayshābūrī, *Al-Mustadrak 'alā al- a ī ayn* (Beirut), vol. 3, pp. 109-110, 148, 533
- Muslim, *Al- a ī* , (English translation), book 31, *ḥadīth*s 5920-3
- Al-Tirmidhī, *Al- a ī* , vol. 5, pp. 621-2, *ḥadīth*s 3786, 3788; vol. 2, p. 219
- Al-Nasā'ī, *Kha ā'i 'Alī ibn Abī ālib*, *ḥadīth* 79
- A mad ibn anbal, *Al-Musnad*, vol. 3, pp. 14, 17, 26; vol. 3, pp. 26, 59; vol. 4, p. 371; vol. 5, pp. 181-182, 189-190
- Ibn al-'Athīr, *Jāmi' al-U ūl*, vol. 1, p. 277
- Ibn Kathīr, *Al-Bidāyah wa al-Nihāyah*, vol. 5, p. 209
- Ibn Kathīr, *Tafsīr al-Qur'ān al-'A īm* , vol. 6, p. 199
- Na īr al-Dīn al-Albānī, *Silsilat al-A ādīth al- a ī ah* (Kuwait: Al-Dār al-Salafiyyah), vol. 4, pp. 355-358

A CURSORY GLANCE AT THE THEORY OF *WILĀYAT AL-FAQĪH*

Prof. Āyatullāh Mu ammad Taqī Mi bā Yazdī

Translator

Mansoor Limba

Cultural Affairs Department

Ahl al-Bayt(ʿa) World Assembly

نام کتاب: نگاهی گذرا به نظریه "ولایة الفقیه"
نویسنده: استاد محمّد تقی مصباح یزدی
مترجم: منصور لیمبا
زبان ترجمه: انگلیسی

Title: **A Cursory Glance at the Theory of *Wilāyat al-Faqīh***

Author: Prof. Āyatullāh Mu ammad Taqī Mi bā Yazdī
Translator and typesetter: Mansoor Limba
Project supervisor: Translation Unit, Cultural Affairs Department
Ahl al-Bayt (*ʿa*) World Assembly (ABWA)
Editor: Sayyid ʿAbbās Ḥusaynī
Proofreader: Majid Karimi
Publisher: ABWA Publishing and Printing Center
First Printing: 2010
Printed by: Laylā Press
Copies: 5,000
ISBN: 978-964-529-573-6
© Ahl al-Bayt (*ʿa*) World Assembly (ABWA)
All rights reserved.
www.ahl-ul-bayt.org
info@ahl-ul-bayt.org

Table of Contents

Transliteration Symbols

Symbol	Transliteration	Symbol	Transliteration
ء	’	أ	**a**
ب	**b**	ت	**t**
ث	**th**	ج	**j**
ح		خ	**kh**
د	**d**	ذ	**dh**
ر	**r**	ز	**z**
س	**s**	ش	**sh**
ص		ض	
ط		ظ	
ع	‘	غ	**gh**
ف	**f**	ق	**q**
ك	**k**	ل	**l**
م	**m**	ن	**n**
هـ	**h**	و	**w**
ي	**y**	ة	**ah**
Long Vowels		**Short Vowels**	
آ	**ā**	ـَ	**a**
ای	**ī**	ـِ	**i**
او	**ū**	ـُ	**u**
Persian Letters			
Symbol	**Transliteration**	**Symbol**	**Transliteration**
پ	**p**	**چ**	**ch**
ژ	**zh**	**گ**	**g**

Foreword

&

O

In the Name of Allah, the All-beneficent, the All-merciful

The precious legacy left behind by the Holy Prophet's Household [*ahl al-bayt*] (may peace be upon them all) and their followers' preservation of this legacy from the menace of extinction is a perfect example of an all-encompassing school [*maktab*], which embraces the different branches of the Islamic knowledge and has been able to train many of the talented personalities by quenching them with this gushing-forth fountain. This school has presented scholars to the Muslim *ummah* who, by following the Holy Prophet's Household (*'a*), have occupied the station of clarifying the doubts and skepticisms brought forth by the various creeds and intellectual currents both inside and outside the Muslim society, and throughout the past centuries, they have been the presenters of the firmest answers and solutions to these doubts.

Anchored in the responsibilities it is shouldering, the Ahl al-Bayt (*'a*) World Assembly has embarked upon defending the sanctity of *risālah* [apostleship] and its authentic beliefs—truths which have always been opposed by the chiefs and leaders of the anti-Islamic sects, religions and trends. In this sacred path, the Assembly regards itself as a follower of the upright pupils of the Ahl al-Bayt's (*'a*) school—those who have always been ready to refute those accusations and calumnies and have tried to be always in the frontline of this struggle on the basis of the expediencies of time and space.

The experiences in this field, which have been preserved in the books of the scholars of the Ahl al-Bayt's (*'a*) school, are unique in their own right. It is because these experiences have been based upon knowledge [*'ilm*] and the preeminence of intellect and reasoning, and at the same time, devoid of any iota of blind prejudices as well as whims and caprices. These experiences address the experts, scholars and thinkers in such a manner that is acceptable to a healthy mind and the pure human natural disposition [*fi rah*].

In a bid to assist those who are in quest of truth, the Ahl al-Bayt (*'a*) World Assembly has endeavored to enter the new phase of these worthy experiences within the framework of research and writing works of the contemporary Shī'ah writers or those who, through the divine guidance, embraced this noble school.

This Assembly is also engaged in the study and publication of the valuable works of the pious predecessors and outstanding Shī'ah personalities so that those who are thirsty of truth could quench their thirst from this refreshing fountain by listening and embracing this truth, which the Holy Prophet's Household (*'a*) has offered as gift to the entire world.

It is hoped that the dear readers would not deprive the Ahl al-Bayt (*'a*) World Assembly of their valuable views and suggestions as well as constructive criticisms in this arena.

We also do invite the scholars, translators and other institutions to assist us in propagating the pure Muḥammadan ( ) Islam.

We ask God, the Exalted, to accept this trivial effort and enhance it further under the auspices of His vicegerent on earth, Ḥaḍrat al-Mahdī (may Allah, the Exalted, expedite his glorious advent).

It is appropriate here to express our utmost gratitude to Professor Āyatullāh Mu ammad Taqī Mi bā Yazdī for writing the book,[1] and to Dr. Mansoor Limba for translating it, as well as to all our honorable colleagues in accomplishing this task especially the dear ones in the Translation Office for performing their responsibility. **c**

Cultural Affairs Department
Ahl al-Bayt (*'a*) World Assembly

1 Mu ammad Taqī Mi bā Yazdī, *Negāhī Gozarā beh Na ariyyeh-ye Wilāyat-e Faqīh*, compiled and edited by Mu ammad Mahdī Nādirī Qummī (Qum: Imām Khomeinī Educational and Research Institute, Spring 1382 AHS (2003)), 160 pages.

Preface

&

O

In the Name of Allah, the All-beneficent, the All-merciful

أَلْحَمْدُ لله رَبِّ الْعَالَمِيْنَ
وَصَلَّى اللهُ عَلىٰ سَيِّدِنَا وَنَبِيِّنَا مُحَمَّدٍ وَآلِهِ الطَّاهِرِيْنَ وَلَعْنَةُ اللهِ عَلىٰ أَعْدَائِهِمْ أَجْمَعِيْنَ

All praise is due to Allah, the Lord of the worlds, and may the blessings of Allah be upon our Master and Prophet, Mu ammad, and his pure progeny, and may the curse of Allah be upon all their enemies.

Indeed, the theory of *wilāyat al-faqīh* [guardianship of the jurist] can be regarded as the most important foundation of the political system in Islam during the period of occultation [*‘a r al-ghaybah*] of the Imām of the Time [*imām al-zamān*][1] (*‘a*).[2] It is the theory that practically proved during the last quarter of the 20th century to all and sundry that religion is competent to

1 It refers to Imām Muḥammad ibn Ḥasan al-Mahdī, the Twelfth and Last Imām from the Prophet’s Holy Progeny who is presently in the state of major occultation [*ghaybah al-kubrā’*] and will appear on the appointed time in the future to fill the world with truth, justice and faith after being engulfed by falsehood, injustice and unbelief. For further information on the Islamic belief on the Mahdī, see Āyatullāh Ibrāhīm Amīnī, *Imam Mahdi: The Just Leader of Humanity*, http://www.al-islam.org/mahdi/nontl/index.htm; Āyatullāh Sayyid Muḥammad Bāqir al-Ṣadr and Āyatullāh Murtaḍā Muṭahharī, *Awaited Savior*, http://www.al-islam.org/awaited/index.htm. [Trans.]

2 The abbreviation, “‘*a*” stands for the Arabic invocative phrase, *‘alayhis-salām*, *‘alayhimus-salām*, or *‘alayhās-salām* [may peace be upon him/them/her], which is used after the names of the prophets, angels, Imāms from the Prophet’s progeny, and saints (*‘a*). [Trans.]

administer the affairs of society. Relying on this idea, the founder of the Islamic Republic of Iran, a rat[1] Imām Khomeinī (*qs*),[2] was able to establish the Islamic government system and to administer it well notwithstanding the opposition of all imperialist powers in the world.

Though the notion of separation of religion and politics and the irresponsiveness of religion in solving social problems and its incompetence in administering the society have been vigorously propagated since the end of the 16th century in the West by both political scientists and statesmen and also acknowledged by the ecclesiastical authority, a Muslim cleric who was a source of emulation was able to bewilder both friends and foes by setting up a government system based on religious principles, values, laws, and in brief, the religious thought. By emphasizing the slogan that "Government is the practical philosophy of all Islamic laws" and refusing to give any name to the new government other than "Islamic republic" and that is, that omitting the word "democratic" suggested by some for this government, he has shown in theory and practice that the "Islamic republic system" under the axis of *wilāyat al-faqīh* is a purely religious system, and that this new system which is detached and distinct from all the current systems in the world, in spite of the arbitrary claim of the opponents, is able to administer the society successfully.

Now that two decades[3] have elapsed after the victory of the Islamic Revolution and the beginning of the rule of Islam and *wilāyat al-faqīh* system in our beloved Iran, our nation's avowed enemies who correctly realized that the secret behind the perpetuity, independence, grandeur, and honor of this country is people's fidelity to religion and *wilāyat al-faqīh*, are hatching various cultural plots to undermine the Islamic ideology and cast doubt upon the Islamic and religious beliefs, principles and values of our people and society with the aim of weakening the principle of *wilāyat al-faqīh* which is one of their strategic objectives. Regrettably, a group of intellectuals render assistance, consciously or unconsciously, to this trend through actions, behavior, speech, and writings.

We believe that in the current status of our society, *wilāyat al-faqīh* constitutes the central pillar of Islam, and its safety contributes to the splendor of Islam and Islamic laws and values in the society. As such, we have decided to elucidate this theory, support it academically and logically,

---

1 *Ḥaḍrat*: The Arabic word *Ḥaḍrat* is used as a respectful form of address. [Trans.]

2 The abbreviation, "*qs*" stands for the Arabic invocative phrase, *quddisa sirruh* [may his soul be sanctified], which is used after the names of pious people. [Trans.]

3 It is now three decades after the triumph of the Islamic Revolution (February 11, 1979). [Trans.]

and enlighten the general public, particularly the young generation of our country who probably know very little about this theory and its ramifications, and thus discharge a small part of our religious duty. Observing the academic coherence of the discussion, we have endeavored to avoid using technical and complicated terms and dialectical methods so that the discussion may appeal to those who have little familiarity with the seminarian and academic issues and terminologies. We have also tried, as far as possible, to use simple words and expressions and avoid dealing with complicated and ambiguous topics. Likewise, we have tried to deal with all the aspects of this theory to address the subjects which we find significant and controversial. However, things like the brevity of content and the readers' patience and the time that they have have been taken into account as far as possible.

In conclusion, it is worth noting that this work contains a number of speeches, articles, books, and question-and-answer sessions of the erudite professor, a rat Āyatullāh Mu ammad Taqī Mi bā Yazdī (may his sublime presence endure), which have been compiled, edited and published by the author. Since the theory of *wilāyat al-faqīh* constitutes part of the Islamic political theory, those who are willing to be familiar with the different aspects of it may refer to the other two pertinent books of the author, viz. *uqūq wa Siyāsat dar Qur'ān* [Law and Politics in the Qur'an] and *Na ariyyeh-ye Siyāsī-ye Islām* [Islamic Political Theory] (Volumes 1 and 2). **?**

Mu ammad Mahdī Nādirī Qummī
Esfand 1378 AHS
(Circa February-March 2000)

+

Chapter 1

Wilāyat al-Faqīh: Exigency and Presuppositions

The importance of discussing *wilāyat al-faqīh*

Our political system, which is now more than two decades old[1] and which thrived at the cost of the pure blood of thousands of noble and self-denying individuals, is a system characterized by its Islamic nature. The establishment of this system is ascribed to numerous contributory factors but the key factor is the love for Islam, and as Islamic system its survival will not be possible without preserving this feature. A sociopolitical system with its Islamic character has to be based on Islamic principles and values both in legislation and execution. This characteristic will continue to exist as long as the people and those who accept this system believe in Islamic doctrines and abide by Islamic values. If, God forbid, Islamic beliefs and thoughts are gradually forgotten by the members of society, essence of Islam will be subject to deviation or if the people forget the foundational values of Islam and deviant trends emerge, the edifice of the Islamic system will decay and there will be nothing to guarantee its survival in the long run. Of course, the name of Islam may remain, but its essence and truth will fall into oblivion. Muslim society already had such an experience at the outset of Islam, and that was after the demise of the Prophet of Islam ( )[2] when

1 It is three decades now. [Trans.]

2 The abbreviation, "ş", stands for the Arabic invocative phrase, *ṣallallāhu ʻalayhi wa ālihī wa sallam* [may God's salutation and peace be upon him and his progeny], which is used after the name of the Holy Prophet Muḥammad (*ṣ*). [Trans.]

the Islamic and divine system was transformed into a monarchial and *āghūtī*[1] government of the Umayyads[2] and ʻAbbāsīds,[3] and only the name of Islam remained and then Islamic beliefs were distorted and Islamic values were forgotten, and the status of the government was more lamentable. This bitter experience ought to be a useful lesson to all of us. This situation went on like for fourteen centuries until another revolution patterned after the divine revolution of the Prophet of Islam ( ) took place in the world, and a new sociopolitical system anchored in the Islamic principles was established. Yet, we should know that just as the first Islamic system and revolution of the Holy Prophet ( ) was not immune from dangers and it did not last long before deviation actually permeated in society, the immunity of this revolution will not be guaranteed, unless we learn from the past and unless the Muslims show great perseverance in preserving this system. Their devotion to Islamic beliefs and values should be such that they would be ready to resist such elements and dangers and offer their lives and properties for the preservation of this sacred system of Islam.

One may ask: From where can deviation originate? The reply is that deviation initially surfaces in people's way of understanding. In other words, if the people do not try to understand Islamic foundations and principles properly or if their awareness diminishes, satanic hands will actively be involved and propagate incorrect thoughts in place of Islamic knowledge, and try to mislead the people by groundless thoughts through the use of propaganda. Therefore, those who are loyal to this revolution and worry about it should strive with utmost vigilance for preserving people's

1 The term *ṭāghūt* applies to any idol, object, or individual that prevents men from doing what is good, and leads them astray. The term has been used eight times in the Qurʾan. Prior to Islam, *ṭāghūt* had been the name of one of the idols of the Quraysh tribe. This name is also used to mean Satan. Moreover, the term is attributed to the one who rebels against lofty values, or whose despotism surpasses all bounds and who claims the prerogatives of divinity for himself either explicitly or implicitly. [Trans.]

2 Umayyads: descendants of Umayyah ibn ʻAbd al-Shams ibn ʻAbd al-Manāf from the Quraysh tribe, and members of the dynasty that ruled at Damascus from 41 AH/632 CE until 132 AH/750 CE and transformed the caliphate into a hereditary institution. Muʻāwiyah ibn Abī Sufyān was the first of the ʻUmayyad line. This kingdom ended with the murder of Marwān II, the last ʻUmayyad caliph. [Trans.]

3 ʻAbbāsīds: offspring of ʻAbbās ibn ʻAbdul-Muṭṭalib, uncle of the Holy Prophet (ṣ), and the dynasty that replaced the ʻUmayyads and established a new caliphal capital in Baghdad. This dynastic rule began in 132 AH/750 CE with the caliphate of ʻAbdullāh al-Ṣaffāh. With the rise of various local rulers, generally of military origin, the power of the ʻAbbāsīds began to decline from the fourth/tenth century and it was brought to an end by the Mongol conquest in 656 AH/1258. [Trans.]

Islamic thoughts and beliefs and decisively parry any threat that may divert their minds and beliefs.

Parrying these threats does not mean that the ideas and beliefs of others be suppressed because surfacing of deviant ideas cannot be controlled by restricting the freedom of people's minds. Doubts are raised and deviant ideas are put forward. As a result, erroneous ideas and thoughts will willy-nilly find their way to people's minds. Therefore, the most appropriate way of encountering intellectual and ideological threats is to strengthen people's intellectual foundation and to widen their knowledge about Islam lest they should be affected by deviant ideas because when their religious and ideological knowledge is very firm, they would not be influenced by doubts, and, most importantly, they would be able to clear these doubts up. Thus, one of the most important issues that ought to be widely discussed and settled as one of the social problems is the issue of the legitimacy of this system or in other words, the issue of Islamic government.

Our revolution came to establish an Islamic government but the people's image about the Islamic government was general and ambiguous. It is true that this general and ambiguous picture was enough to topple down the *āghūt*, but it is not enough to achieve and preserve unerringly the Islamic system and to make this idea settle, by the help of God, the Exalted, in the hearts of people and future generations for centuries. These concepts should be made clear and the people should have a more realistic perception of the Islamic government and understand its exigency so that they may be prepared to defend their ideas against the opposing schools of thought and theories and not be satisfied with chanting slogans.

The academic status of the question of *wilāyat al-faqīh*

When we say that we are supporters of the Islamic system and our society has to be governed according to Islam, we mean that the government should be based on Islam. Of course, attempts were made to consolidate the foundations of this system in our Constitution and to rely upon them. The principle of *wilāyat al-faqīh* [guardianship or governance of the jurist] is the most important of all other principles. At this juncture, we shall touch on the issue in question so as to explain what we mean when we say that the system and government must be Islamic.

The ideological nature of a system and its reliance upon specific principles and values—in other words, the dependence of a system on a set of specific principles, doctrines, ideas, and thoughts—manifests itself in at least two dimensions; the "legislative" dimension and the "administrative and executive" dimension. Of course, a third dimension, i.e. the "judicial"

dimension can also be considered, but this dimension is not as firm as the two dimensions already mentioned. In any case, there are two main dimensions, i.e. the legislative and the executive, and the judiciary comes next. In view of this introduction, we may say that if *firstly* the laws, which the system regards as binding and which the system is ready to defend, are Islamic, and *secondly* those who are in charge of executing these laws reach the said position according to Islamic standards, principles and values, then it is an Islamic system. We do emphasize the idea that the Islamic nature of a system is conditional on the existence of the two dimensions. As such, if the laws are drifted away from the Islamic path and non-Islamic laws are to be the criterion of execution, or if all the laws are purely Islamic and consistent with the Qur'an and the *sharī'ah* [Islamic law] but those who are in charge of the affairs and executive officials have not assumed the said responsibilities according to Islamic standards and criteria but through non-Islamic ways, the system will in neither of the cases be "Islamic" in the exact sense of the word. So, theoretically, two main points come to the fore in this discussion. The first point is related to the kind of conditions and criteria which contribute to Islamizing legislation and legislature. The other point is on how and when, according to Islamic law, executive and administrative officials can acquire and on what basis they can exercise authority over the society and people. These two issues are placed under a general subject called "Islamic political philosophy". Our main concern in this book is the second issue and our treatment of the first issue will be postponed. In this discussion, we have kept two things in mind; treating the subject with great accuracy and discussing things in as simple manner as possible so that it may be a source of interest not only to highly educated people but also to the general public.

The presuppositions of the theory of *wilāyat al-faqīh*

According to Islam, the theory of *wilāyat al-faqīh* is among the subjects of the philosophy of politics. Every theory has to be based on an array of prescribed principles and presumptions accepted by those who regard the theory as valid. A thorough examination of the principles that confirm the soundness of the theory of *wilāyat al-faqīh* and establish its superiority to other theories of the philosophy of politics naturally requires numerous discussions and voluminous books, which is not our concern as of the moment. Some of these discussions like those related to the exigency of government can be found in the book, *uqūq wa Siyāsat dar Qur'ān* [Law and Politics in the Qur'an]. Nevertheless, we will touch on whatever relevant to the issues treated in this volume.

1. The need for government

The first principle and presupposition of the theory of *wilāyat al-faqīh*, which is approved by most other political theories is the principle of the society's need for government. It is opposed only by anarchism. Anarchists believe that people conduct themselves well by abiding by moral principles without the need for government, or they at least advocate the idea that the government should move in a direction leading to this end. That is, activities are carried out alongside the process of educating the people whereupon there is no need for government. The other philosophical schools, however, consider such proposition unrealistic. Also in practice, thousands of years of experience show that in all times there are individuals who are indifferent to moral laws and if there is no authority to control them, social life will end up in chaos and turmoil. In any case, the principle of the society's need for government which is accepted by all schools of political philosophy, with the exception of anarchism, is affirmed by the theory of *wilāyat al-faqīh.*

2. The legitimacy to govern is inherent in no individual or group

We can define 'government' in a simple way as "the apparatus which oversees the collective conduct of society and strives to direct it to a specific end." Authority is either exercised through peaceful means or through the use of force. In other words, if some individuals refuse to follow the direction set by the government, they will be compelled to comply with the rules set by the government by force and the use of military and disciplinary organs. This definition along with its explanation applies to both legitimate and illegitimate governments. Therefore, we ought to know what the criterion or the condition of the legitimacy of a government is. Is legitimacy inherent in any individual or group? Or, is it inherent [*dhātī*] in anyone but something delegated by someone else? Some philosophers and schools of political philosophy hold that if someone has a superior and greater physical power, or is brighter and more intelligent than others, or racially superior to them, naturally such a person is good enough to be a ruler. Although these observations are attributed to some statesmen and political philosophers, the political foundations of the theory of *wilāyat al-faqīh* are contrary to them. This theory is founded on the presupposition that the right to rule is inherent to no one and is not automatically assigned to anyone. That is, no one has a legal right to be a ruler due to his being born of a certain parentage. The right to rule is not something hereditary that can be transferred from one's father and mother. Rather, the legitimacy of a ruler and government must emanate from another source. Most philosophers and political philosophy theoreticians accept this principle and also the previous one, and the majority of schools of political philosophy such as the schools supportive of

democracy agree with our idea that the right to rule and govern (i.e., legitimacy) is inherited by nobody and it is not automatically assigned to anyone. Rather, it is supposed to be delegated to others by the authority to whom this right originally and essentially belongs.

As such, by establishing these two principles, we have excluded anarchism and the schools and theoreticians that assume that certain individuals and groups automatically and inherently have legitimacy to govern and so they are naturally superior to others.

3. God as the only essential source of legitimacy

After the acceptance of the second principle, this question will naturally surface: What is that source which grants legal authority and legitimacy to a ruler and government? So it is in this point that the theory of *wilāyat al-faqīh* and political philosophy of Islam differ from most other schools especially the current theories. According to this principle which is one of the key foundations of the theory of *wilāyat al-faqīh* and political philosophy of Islam and accepted unanimously by Muslims and perhaps, by many religions with divine origins apart from Islam, the right to rule and govern, to bid and forbid, originally belongs to God, the Exalted. Of course, it is worth noting that "to govern" in its specific sense and that is one's performing of certain actions and direct management of the affairs applies only to human beings, and it is not applicable to God, the Exalted. But its broad sense which involves the instinctive right to rule and to designate the ruler is ascribed to God, the Exalted—the Lord and the Real Owner of everything who has created the world and all beings including man:

﴿ لِّلَّهِ ما فِي السَّمَاواتِ وَمَا فِي الأَرْضِ ﴾

"To Allah belongs whatever is in the heavens and whatever is in the earth."[1]

Here "real ownership" is used as distinct from "nominal ownership". In the case of nominal ownership, a person is recognized as "owner" according to a contract between a number of individuals. So, this contract may not be identical in all societies. For example, it might be that in a certain society the contract considers those who find any gold mine, for instance, to be its owners, but in another society it considers all mines as the property of the public and the government is to take charge of them. Real ownership, however, arises from a sort of ontological relationship in which the

1 *Sūrah al-Baqarah* 2:284. In this volume, the translation of Qur'anic passages is adapted from Sayyid 'Alī Qulī Qarā'ī, *The Qur'an with a Phrase-by-Phrase English Translation* (London: Islamic College for Advanced Studies Press, 2004). [Trans.]

existence of the owned thing [*mamlūk*] is originally ascribed to the existence of the owner [*mālik*]. This kind of relationship is technically called the cause-and-effect relationship. In such an ownership the "contract" does not stipulate that the owned thing belongs to the owner, rather the owned thing truly and ontologically belongs to the Owner and owes existence to Him. Accordingly, since all human beings are created by God, they are all owned by Him. Therefore, the human being not only has no authority whatsoever over other human beings but has no inherent authority over himself because the possessor of authority is someone else. In accordance with this conviction, no human being has the right to amputate any organ of his body, blind his eyes, or commit suicide because the existence of any human being belongs to someone else.

Most of the schools of political philosophy and other cultures oppose this presupposition and hold that every man is free. Therefore, since the authority over the life and property of people and wills and rights of individuals is of the essence in governing, Islam says that no one other than the one who has been delegated by God has the right to have authority over others. In any case, the belief that no one has authority over the servants of God without the permission of God, the Exalted, is a fundamental principle in the Islamic thought.

It is by the acceptance of this principle that political philosophy of Islam can be distinguished from other existing schools in this regard and the theory of *wilāyat al-faqīh* from other theories of government and political systems. It is for this reason that those who believe in the legitimacy of the government of the elite, the philosophers and sages, the nobles and affluent, or those who gain a victory in a war and take over through violence and the use of force and even the theory of democracy (including democracy in its different interpretations and approaches) follow an ideology separate from that of Islamic thought. For example, as a theory democracy is founded on the idea that sovereignty originally belongs to the people and it is their right and it is their vote that determines the legitimacy of ruler and government and gives them legal authority to rule. When we examine the third presupposition already mentioned, we find that it is not consistent with the theory of *wilāyat al-faqīh* because on the basis of the third presupposition, just as an individual does not inherently have the right to rule, the aggregate of people and society do not inherently have such a right. This is because the entire universe and whatever exists in it belong to God and everything is originally owned by God, the Exalted, and all their movements and acts must have to be in accordance with the command or prohibition of the Real Owner. They have no right to rule over others or to choose someone to rule.

Relevant to this presupposition, we may also point to one of its ramifications which is accepted by all Muslims and that is, due to His original and essential right to govern, God, the Exalted, has in a lower degree, granted this right to the Noble Prophet of Islam, a rat Mu ammad ibn ʻAbd Allāh ( ) and appointed him a governor having authority over people's lives, property, rights, and freedom.

Again we emphasize that there is a great difference between the theory of *wilāyat al-faqīh* or Islamic government in its true sense and as understood and declared by "true Islamologists" [*Islāmshināsān-e rāstīn*] (an appellation used by Imām Khomeinī (*qs*) to describe the late Āyatullāh Murta ā Mu ahharī)[1] and the theory of democracy, and the theory of *wilāyat al-faqīh* cannot compare with the theory of democracy. Those who wanted or want to do so, whether those who at the outset of Islam and after the demise of the Messenger of Allah ( ) designated a ruler contrary to the explicit injunction of God and His Apostle ( ) or those who being fascinated by or deluded by the Western culture, present today such an interpretation of the theory of *wilāyat al-faqīh*, either have no proper understanding of Islam, or had done or are doing so for personal and political reasons. According to Islam, the right to rule and to designate a ruler originally and essentially belongs to God, the Exalted, and it is only through His decree that this right can be granted to someone, and as we mentioned in the supplementary point to the third presupposition, this right was first granted to the Noble Prophet of Islam ( ).

1 Professor Āyatullāh Murtaḍā Muṭahharī (1298-1358 AHS) was born to a family of clergymen on Bahman 13, 1298 AHS [February 3, 1920] in the village of Farīmān near Mashhad. At the age of 12, he went to Mashhad where he learned the basics of Islamic sciences and then moved to Qum where he attended the sessions of the great authorities of the theological center. From 1319 AHS [1940] Muṭahharī attended the sessions held by Imām Khomeinī and other famous teachers of the time. Moreover, he himself gave lectures in subjects like Arabic literature, logic, *kalām* [scholasticism], jurisprudence [*fiqh*], and philosophy. In 1331 AHS [1952] Muṭahharī moved to Tehran and in 1334 AHS [1955] he was invited to teach Islamic sciences at the Faculty of Islamic Sciences, Tehran University. He was arrested in the midnight of Khordād 15, 1342 AHS [1963] and remained in prison for 43 days. After Imām Khomeinī's migration to Paris in France, Muṭahharī went to meet him and the Imām assigned to him the responsibility of organizing the Revolutionary Council. On the night of Ordībehesht 11, 1358 AHS [May 1, 1979] Muṭahharī was martyred by one of the agents of the terrorist Furqān group. He wrote more than 50 books and tens of articles, and delivered scores of speeches. Imām Khomeinī said of Muṭahharī: "His written and spoken words are, without exception, educational and enlivening… I recommend that the students and intellectual groups not to let Muṭahharī's words be forgotten by un-Islamic tricks…" [Trans.]

4. The inseparability of religion and politics

One of the most important presuppositions of the theory of *wilāyat al-faqīh* is the inseparability of religion and politics; in other words, politicalization of religion. So, it is incorrect to think that Islam is only concerned with man's personal affairs in this life and has nothing to do with social matters including those political affairs and the management of society, or to assume that these affairs can be managed by individuals who are free to act according to that which they think appropriate and agree upon. According to the theory of *wilāyat al-faqīh*, apart from its political laws, Islam has a specific theory about government and determination of sovereignty. It is evident that if a person believes that there is no relationship between religion and politics and they have no relation to each other, religious scholars and jurisprudents are responsible only for religious affairs, political affairs is the concern of the statesmen and these two realms are totally separate from each other, then there will remain no place to discuss the issue of the Islamic government and the theory of *wilāyat al-faqīh*. Although the purpose of this book is not to prove the soundness of these presuppositions and elaborate the issues related to them, on account of the distinct importance of the fourth presupposition, the next chapter is devoted to the treatment of it. ❓

Chapter 2

The Relationship between Religion and Politics

Secularism

Many talks have already been made regarding the relationship between religion and politics. In our country and in Muslim and Western countries, diverse ideas and opinions have been presented in this regard. If we place these different ideas and opinions in a spectrum, "the theory of separation of religion and politics" will occupy one side and "the theory of inseparability of religion from politics" the other side. Of course, there are also moderate theories which fall between these two opposite poles. We do not intend here to examine and criticize all these theories. Rather, we intend to examine and criticize "the theory of separation of religion from politics" to state our views regarding the relationship between religion and politics.

In academic circles and current literature, the theory of separation of religion from politics is usually referred to as "secularism". Of course, the word "secularism" has various connotations. In any case, it must be noted that the word "secularism" is used to mean separation of religion from politics.

The meaning of separation of religion from politics (i.e., secularism) is that the arena of each of them is different from that of the other, and none of the two must interfere in the matters related to the realm of the other. In other words, "neither religion nor politics is involved in the arena of one another." For those who are familiar with technical and scientific definitions, it is clear that the first definition falls in the category of value-oriented concepts

("must and must not") while the second definition falls in the category of epistemological concepts ("is and is not").

According to this theory (secularism), religion and politics are like parallel lines which never meet, and each one has a separate direction. Each of them has a certain end. A study of the subsequent discussions will make us form a more vivid picture of this theory.

The early development of secularism

Secularism actually started in the Medieval Europe, and its roots should be traced back to the period of the dominance of the Church over all the affairs and people in Europe. The Church at that time was divided into two: Western Roman and Eastern Roman. The center of the Eastern Roman Church was in today's Constantinople in Turkey while that of the Western Roman Church was in the present-day Rome in Italy where the popes used to have enormous power and influence so that the kings and monarchs of different countries extending as far as Spain received orders from them.

Having at their disposal big trades and industries as well as enormous endowed properties and vast agricultural fields, the popes and Church enjoyed great economic and military power. In practice, their authority was such that they had control over the entire European continent and challenged the rulers and monarchs of other lands and confronted them. Of course, this power was not constant and was occasionally undermined by rebellions of kings and rulers, but the pope had practical authority over the entire Christian countries, and monarchs had to submit to and obey him. This was the claim of the Church which tried its hardest to exercise it. This sovereignty and dominance covered all spheres ranging from individual aspects, laws and religious rituals to the sociopolitical aspects as well as various sciences. Training and education, learning and teaching sciences including mathematics, literature and astronomy were also under priests' control. The court rulings of the Inquisition during that period such as the sentence issued against Galilei Galileo (1564-16-42) on account of his view about the earth as spherical in form which was contrary to the Ptolemaic view adopted by the Church and its revolution around the sun contrary to the Church's notion of geocentrism i.e., the earth is the center of the universe and all planetary bodies revolve around it are proverbial to all and sundry.

This is while the Christian Church at that time had no solid intellectual and religious basis. It mainly borrowed its ideas from empirical scientists and philosophers and had no firm material of its own. Naturally, in this system with its vast extent alongside the weakness and dearth of scientific

foundations and theoretical underpinnings, corruption began to develop and gave rise to movements against the papacy and the Catholic Church. Figures such as Martin Luther (founder of the Protestant Church) came from within the ecclesiastical establishment to carry out a reform in the Christian teachings and take actions alongside other political and cultural reform movements. All these activities resulted in the formation of a great movement against the Pope which gave impetus to the Renaissance. One of the most major effects of the Renaissance which was also advocated by some church leaders and priests was condemning the Catholic Church's conduct and its interference in the matters related to the society such as political affairs. It was claimed that what the Catholic Church had preached and practiced until then was deviant from the teachings of Christianity and that true Christianity had nothing to do with government and political activities, and it is only concerned with strengthening man's relationship with God inside the church. Therefore, all the misfortunes, deprivations and backwardness of Europe throughout those centuries were attributed to the Church and its teachings, and so it must be expelled from the scene. The main subjects of the Church were on God, the heaven and celestial kingdom. The Europeans decided to use other teachings and slogans in lieu of those teachings which brought about the society's misfortunes, replacing man with God, earth with heaven, and terrestrial life with celestial kingdom.

In this way, the slogan of "God, heaven and celestial kingdom" gave way to another three-pronged catchphrase, i.e. "man, earth and terrestrial life" and Westerners separated religious questions from the serious issues of life, assuming that life affairs are worldly matters and must be solved on earth instead of resorting to God in the celestial world for solution. This trend became known as "secularism," i.e. this world and earthly life. It was on this basis that it was supposed that if there are God and religion, those who believe in them, they and their God know; they must not be concerned with social matters. The place of religion is in the church and temple; there, you may cry, supplicate and repent as much as you want, but once you step out of the church and be in the social scenes and face serious life affairs, you will have nothing to do with religion. Religion has a specific domain and politics has another. Politics means management of social affairs while religion is concerned with the relationship between man and God. In this way, the relationship between religion and politics in Europe and Christianity was severed, and a demarcation line was drawn between the two so that personal matters were placed at one side and social affairs at another. Furthermore, it was claimed that in essence, religion is something which has to do with one's personal taste, and it corresponds to such subjects like literature and poetry. For example, when a poet says, "O my

moon! O my sun! O gentle breeze! Carry this message to my beloved" such expressions are nothing but personal imagination because in reality no gentle breeze can carry someone's message, and likewise, the moon and the sun cannot hear someone's voice. These words merely express the poet's emotional excitements and agitations. Similarly, when a person goes to a corner and cries, "O my God! O my Lord!" it is not known whether or not there is God. The poet says, "O full moon, you are so beautiful!" Today's astronomy, however, says that the moon is a cold and lifeless heavenly body, and it is like a waterless and barren desert that has no beauty. When a person says, "O my Lord, You are so good!" this is only a psychological outpouring that gives the person emotional tranquility. In sum, in order for man to be realistic, he must work, earn money, live and amuse himself; form a government, enact laws, punish and imprison criminals and offenders, and wage war and make peace, and these things have nothing to do with religion. In fact, they are in line with positivist philosophy, which was introduced in the West after the Renaissance. Positivism considers whatever we feel and see real and we must think about it and set a plan for it. Since God and the celestial kingdom are not seen or experienced by anyone, they should be taken for granted.

With the passage of time and the hybridization of cultures which is expedited by the emergence of modern and advanced technologies, secularist ideas have permeated down to Muslim countries and Muslim thinkers. Also this question was put to Muslim thinkers: "Why must Islam not be like Christianity? Islam is also a religion which deals with the relationship between man and God. So, it must not interfere in the social life of the people."

Following the Islamic Revolution which was also staged and triumphed in the name of religion and Islam, similar ideas were put forward. Some people who assume that they are concerned about Islam (of course, some do so ostentatiously) say: "You have integrated religion with politics, and designated religion as the foundation of your government. Your venture, like that of the Catholic Church, will end up in failure and so there is no use trying the experience that was already tried. It is wrong to experience that which is experienced already. In order to save the religion and in order not to give ground for attributing problems, unpleasant things, ignorance, and sabotages to religion, it must not be held accountable for the unbecoming behavior of some clerics and religious figures who hold government posts. And this will not be possible unless religion is separated from politics. If you want your religion to remain safe and the Qur'an and Islam be respected, you have no alternative other than taking religion away from the political scene and entrusting politics to the politicians so that the reputation

of clerics and religious scholars will be preserved, their image not tarnished and their undue interference in the political affairs not disrupt things. The notion that religion must be involved in politics is wrong and a new interpretation must be brought out. It is necessary to have an Islamic Protestantism and a Muslim Martin Luther otherwise your religion and Islam will completely be destroyed."

In any case, secularist tendency has influenced some Muslim countries such as Turkey to the extent that their constitution has adopted a laic system, and a Muslim employee in government offices has no right to mention the name of Islam or have any religious motto or religious symbol. Even wearing an Islamic clerical garb is prohibited in Turkey. If a person wears religious attire or puts on his head a scarf or handkerchief that resembles a turban, he will be held accountable. This is the situation of a country which was one day the seat of a great Muslim caliphate and the Ottoman Empire, which a large part of Asia and approximately half of Europe were at its disposal.

Secularism viewed from outside religion

In a bid to establish the theory of separation of religion from politics, some local writers and so-called intelligentsia argue that prior to touch on religion it is necessary to look at things from outside religion and discuss this question: In essence, why does man need religion, and when can religion be a good guide for man? In reply to this question, two answers are put forward. One is to say that man is in need of religion in all things and in all aspects of life, and has to see what answer, instruction or solution the religion gives—for example, how to eat foods, how to weave cloth, how to wear clothes, how to build houses, how to marry, how to form a community, etc. In brief, religion must solve all man's problems. If we accept such an answer and have it as a basis for the idea that if one wants to weave cloth, he is supposed to know what religion says about it; if one wants to take foods, he has to know what religion says about it; if one wants to see a doctor, he has to know what Islam says about it. Along this line, it is natural that when we need to form a government, we have to know what religion says about it. But everybody knows and obviously this is not the case. No religion claims that it can meet all the needs of mankind and it teaches you how to build this house or that building. If it was so, then there would be no need to conduct academic or scientific research because it would be possible to solve any problem through religion. But we know for certain that the presence of religion and religious laws does not nullify the need for acquiring knowledge and conducting research. Religion cannot provide mankind with the information about the technology of the phantom jet aircraft, computer, satellite, and atomic physics. Therefore, such an answer,

i.e. to say that religion is responsible for solving all mankind's problems is definitely incorrect. In other words, we are not supposed to have the "maximum" expectation from religion by imagining that it is a means of solving everything.

So, since we are not contented with the first reply, the only thing that can be said about our expectation from religion is that basically religion is an otherworldly affair and its main aim is building man's hereafter. It is not concerned with the worldly life and man's social and mundane affairs which have to be taken care of by man's own knowledge, intellect and prudence. So, according to the meaning they use, we are supposed to have only a "minimum" expectation from religion. Thus, the domain of religion includes only otherworldly affairs—such as how to offer prayer, how to fast, and how to perform the *ajj*. In other words, it deals with what we have to do in order not to be placed in the hellfire and to be admitted to paradise. Regarding the things related to this world, one has to resort to knowledge and reason and regarding the things connected to the hereafter, one has to refer to religion. Politics is related to worldly affairs and basically it has nothing to do with the domain of religious concerns. Politics falls in the province of knowledge and reason, and naturally religion has no access to it. As such, it is the scholars of social sciences and politicians who should manage political affairs and attend to social concerns, and the jurisprudents and religious scholars should be concerned with people's hereafter, and it does not behoove them to involve themselves in governance, and if they do, their performance will not be grounded on theoretical foundation or correct logic, and as stated earlier, it will be unscientific and illogical.

It is clear that the above account of secularism or the separation of religion from politics is much harsher than that introduced in the Western world after the Renaissance.

Assessing the relationship between religion and politics

First of all, it is necessary to point out that what we mean here by "religion" is Islam and not any other religion. Therefore, our main concern is "the relationship between Islam and politics". Now that we have clarified this point, it is necessary for assessing the relationship between religion and politics to have a consensus of opinion on the meaning of these two concepts, and point out what we mean by religion and politics.

"Politics" in common usage is something loathsome. It is laden with negative connotation linked with deception, ruse, trickery, and fraud. It must be noted, however, that what we mean is something other than this meaning of "politics". Rather, in simple terms, what we mean by "politics" is the

"method of governing a country". To be more precise, politics in this discussion means "a method of managing the affairs of society in which both political and spiritual interests of the society are taken into account." Therefore, it is concerned with managing social affairs.

By "religion", i.e. Islam, we mean a set of laws, beliefs and values decreed by God for the guidance of mankind and to ensure man's felicity in this world and the hereafter which were conveyed to the people and explained for them by the Prophet of Islam ( ) and the immaculate Imāms (*ʿa*) or might be discovered by the definite ruling of the intellect.

After having clarified the meaning of "religion" and "politics", if we want to know whether or not Islam encompasses sociopolitical affairs, the best thing to do is to refer to Islam itself. If we want to know the viewpoint of Christianity regarding a certain subject though we are not Christians, the logical and correct way is to refer to the Bible in general and the New Testament in particular. Similarly, if we want to identify the status of politics in Islam, we have to refer to the Qur'an, and religious precepts and laws to see whether Islam is concerned with politics and the management of social affairs, or it only takes care of individual and personal matters. If one says that Islam is not the same as that which the Qur'an says; it is not the same as that which the Prophet of Islam ( ) has stated; it is not what the infallible Imāms (*ʿa*) have said, but Islam corresponds with what I say, obviously such an assumption is illogical and inadmissible. If one wants to explore Islam, instead of referring to the Muslims, he has to see what the Qur'an and the *Sunnah* state in this regard, and not take for granted what certain European or American orientalists say about it or rely on personal interpretation of some verses of the Qur'an and the *Sunnah*. If someone says that he or she accepts Islam and assumes that Islam is not as the Qur'an has stated and not as the Prophet ( ) has preached, this is definitely tantamount to disbelieving Islam. Therefore, in order to know the relationship between Islam and politics, we have to refer to the Qur'an and the *Sunnah*.

In order to clarify the view of Qur'an on this issue, all that we need is to have some knowledge of the Arabic expressions. We do not need to be well qualified in Arabic literature or be experts in the exegesis of the Qur'an and we do not need to study the brief exegesis of the Qur'an, but a general familiarity with the Arabic lexicon will do. A study of the Qur'an will reveal that just as Islam takes care of such issues like individual devotion and morals, it also deals with the affairs of family, living and family relationship, marriage, divorce, trading and transactions, rearing of children, obedience to "those who are vested with authority" [*ulu'l-amr*], debt, mortgage, war and peace, civil law, penal and criminal laws, international law, and the like. There are numerous verses in the Qur'an and many times

more than that of the traditions and narrations related from the Prophet of Islam ( ) and the immaculate Imāms (*ʿa*) that deal with such issues. Given this fact, can we accept the idea that Islam has paid attention to politics and the organization of social relationship, or assume that it dealt only with the individual devotion and morals and with organizing the relation between man and God?! Here are some examples that demonstrate what we have put forward:

The longest verse of the Qur'an is related to money lending and asserts that if you want to lend money to somebody, you have to get written receipt from him in the presence of two witnesses before handing him the money. If no pen and a sheet of paper are available, take something valuable from him as a mortgage which is to be given back to the borrower when he gives back the money he borrowed.[1] Now, can one say that Islam pays no attention to social affairs and the organization of social relations?

Marriage and divorce also are examples of social issues. There are numerous verses in the Qur'an about marriage rites and etiquette,[2] divorce rites and etiquette,[3] the rules of payment and acceptance of dower [*mahriyyah*],[4] the person, whom one is allowed or not allowed to marry,[5] conjugal life,[6] settling family disputes, and others. For example, it states about settling family disputes:

﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُواْ حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلاَحًا يُوَفِّقِ اللّهُ بَيْنَهُمَا إِنَّ اللّهَ كَانَ عَلِيمًا خَبِيرًا ﴾

"And if you fear a split between the two of them, then appoint an arbiter from his relatives and an arbiter from her relatives. If they desire reconcilement, Allah shall reconcile them. Indeed, Allah is All-knowing, All-aware."[7]

The question of inheritance is another example of social issues with which the Holy Qur'an has dealt, devoting to it many verses:

1 *Sūrah al-Baqarah* 2:282-283.

2 *Sūrah al-Baqarah* 2:240.

3 *Sūrah al-Baqarah* 2:230; *Sūrah al-A zāb* 33:49.

4 *Sūrah al-Nisā'* 4:20.

5 *Sūrah al-Nisā'* 4:23.

6 *Sūrah al-Baqarah* 2:222-223.

7 *Sūrah al-Nisā'* 4:35.

﴿ يُوصِيكُمُ اللّهُ فِي أَوْلاَدِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الأُنثَيَيْنِ فَإِن كُنَّ نِسَاء فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ﴾

"Allah enjoins you concerning your children: for the male shall be the like of the share of two females, and if there be [two or] more than two females, then for them shall be two-thirds of what he[1] *leaves; but if she be alone, then for her shall be a half."*[2]

Another social issue is civil war which may take place at any time. In this regard, the Noble Qur'an states:

﴿ وَإِن طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِن بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِن فَاءتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴾

"If two groups of the faithful fight one another, make peace between them. But if one party of them aggresses against the other, fight the one which aggresses until it returns to Allah's ordinance. Then, if it returns, make peace between them fairly, and do justice. Indeed Allah loves the just."[3]

Business dealings and transactions are other examples of social relations. Islam and the Qur'an have not disregarded them or delegated them to reason, knowledge and common view. In fact, the Glorious Qur'an has made known the rules and regulations of trading:

﴿ وَأَحَلَّ اللّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ﴾

"Allah has allowed trade and forbidden usury."[4]

﴿ يَا أَيُّهَا ٱلَّذِينَ آمَنُواْ إِذَا نُودِيَ لِلصَّلوٰةِ مِنْ يَومِ ٱلْجُمْعَةِ فَاسْعَواْ إِلىٰ ذِكْرِ اللهِ وَذَرُواْ ٱلْبَيعَ ﴾

"O you who have faith! When the call is made for prayer on Friday, hurry up toward the remembrance of Allah, and leave all business."[5]

﴿ يَا أَيُّهَا الَّذِينَ آمَنُواْ أَوْفُوا بِالْعُقُودِ ﴾

"O you who have faith! Keep your agreements."[6]

---

1 That is, the deceased person.

2 *Sūrah al-Nisā'* 4:11.

3 *Sūrah al- ujurāt* 49:9.

4 *Sūrah al-Baqarah* 2:275.

5 *Sūrah al-Jum'ah* 62:9.

6 *Sūrah al-Mā'idah* 5:1.

Concerning social crimes, there are numerous laws in the Holy Qur'an. For instance, regarding theft, which is one of the grave and manifold crimes of society, it states:

﴿ وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُواْ أَيْدِيَهُمَا جَزَاء بِمَا كَسَبَا نَكَالاً مِّنَ اللّهِ وَاللّهُ عَزِيزٌ حَكِيمٌ ﴾

"As for the thief, man and woman, cut off their hands as a requital for what they have earned. [That is] an exemplary punishment from Allah and Allah is All-mighty, All-wise."[1]

With regard to committing fornication or obscene acts, when a Muslim authority or judge discovers that such an act had been committed, it is considered a crime in Islam and a severe penalty is assigned for it even if there is no complainant. The aim is to ensure social immunity from it and foster security against violations. The Holy Qur'an says with utmost clarity and explicitness:

﴿ الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَاتَأْخُذْكُم بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ ﴾

"As for the fornicatress and the fornicator, strike each of them a hundred lashes, and let not pity for them overcome you in Allah's law, if you believe in Allah and the Last Day, and let their punishment be witnessed by a group of the faithful."[2]

These examples are among tens of Qur'anic verses about social relations and social affairs in addition to a larger number of the sayings of the Holy Prophet ( ) and the immaculate Imāms (*'a*). Now, are these Qur'anic verses and traditions about personal matters and relation between man and God, or about people's relation with one another and organizing social relations? If what is contained in these Qur'anic injunctions and narrations represent the core of Islam, can it be claimed that Islam has nothing to do with the administration of social affairs and has totally delegated people' worldly affairs to themselves and only dealt with the hereafter, paradise and hellfire? Fair-minded and rational people have no iota of doubt that Islam is not so. Of course, out of obstinacy, some people may ignore lots of things, but the explicit contents of Qur'anic verses are solid evidence of Islam's involvement in political affairs and administration of society, and ignoring this fact is like ignoring the existence of the sun, which appears everyday in the sky, giving heat and light to the entire world.

1 *Sūrah al-Mā'idah* 5:38.

2 *Sūrah al-Nūr* 24:2.

We can also examine if there are Qur'anic verses related to politics in another way. Therefore, it is possible to examine Qur'anic verses on the basis of the view that a government and political system should consist of three powers. In other words, it has been known that since the time of Montesquieu[1] an administrative body has had three powers, viz. the legislative power, executive power, and judicial power. With this idea in mind, we can embark on examining whether or not the Holy Qur'an has dealt with questions related to each of these three powers. It is obvious that if we find that there are verses related to each of these powers, the involvement of Islam in politics, and as a result, the political nature of Islam, will become manifest.

The function of the legislative power is enactment of laws for managing society's affairs—that is, under what specific conditions the people should observe certain behavior so that justice, security and order in society may govern, the rights of individuals not be trampled upon, and the society move toward reform and progress.

Along with the legislative power there is the executive power whose function is execution of the laws enacted by the legislative body, which is represented by the cabinet and prime minister, or by the president and ministers.

Finally, alongside these two powers, there is what is known as the judicial power or judiciary, which is neither a law-making body nor executor of laws. Instead, it assumes the responsibility of putting into effect the general laws in particular cases and adjudicating the disputes that may occur between people or between people and government. Now, let us see whether or not the Qur'an has said something about these subjects, mentioned something about these functions, and specified the pertinent duty of the Muslims, or whether it has delegated them to the Muslims themselves to do what they consider exigent and appropriate.

Regarding the law-making function (that is, social laws), as we have said earlier and cited some examples about it, Islam and the Qur'an have dealt with this subject by establishing civil laws, legal and penal laws, trade and transaction laws, and many others. Therefore, Islam takes care of the issues pertaining to country management including enactment of laws for the

1 Charles Louis de Secondat Baron de la Brede et de Montesquieu (1689-1755): French writer and jurist, who explored in depth in his *The Spirit of the Laws* (1748) the modern idea of the separation of powers as well as the checks and balances to guarantee individual rights and freedoms. Albeit not using the term "separation", Montesquieu outlined a three-way division of powers in England among the parliament, the king, and the courts, though such a division did not in fact exist at the time. [Trans.]

purpose of managing society's affairs. In addition, the Qur'an has also mentioned that the Holy Prophet ( ) has the right to lay down laws in certain cases in accordance with the conditions of the time and space and they have to be compatible with the changes in the conditions of the time and space, and made it incumbent on the people to comply with them. In this regard, the Qur'an states:

﴿ وَمَا كَانَ لِمُؤْمِنٍ وَلاَ مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَن يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ ﴾

"A faithful man or woman may not, when Allah and His Apostle have decided on a matter, have any option in their matter."[1]

According to this verse, if God and the Prophet ( ) decide something for the people and enjoin a matter, no one has the right to go against it. The Muslims have no prerogatives for themselves against what has been decided by God and the Prophet ( ). In other words, next to God's commands and the confirmed divine laws, the law of the Prophet ( ) has to be observed by all those living in a Muslim society under the banner of the Islamic government. No one has the right to oppose what the Prophet ( ) has enacted and decided for the sake of the people or to set an alternative for oneself. The mentioned verse along with the verse "*The Prophet is closer to the believers than their selves*"[2] represents the highest legal and executive position which may be given to a person. In Islam, this privilege has been bestowed to the Holy Prophet ( ). Of course, the idea whether or not this position has been given to others after the Prophet ( ) will be dealt with in the succeeding sections of this book. We have so far noticed that Islam and the Qur'an assign special importance to the function of legislative power, and apart from the enactment of social laws, the Qur'an has given the Prophet ( ) the right of making laws under different circumstances and has made it incumbent on people to observe these laws. Similarly, we have noticed that the purport of the two mentioned verses (*Sūrah al-A zāb* 33, verses 6 and 36) include some ideas about the function of executive power and implementation of these laws.

As for the judicial power and the idea of adjudicating disputes and conflicts, which constitute another dimension of governance and politics, they have been given attention by the Holy Qur'an, which states, hence:

﴿ فَلاَ وَرَبِّكَ لاَ يُؤْمِنُونَ حَتَّىَ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لاَ يَجِدُواْ فِي أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُواْ تَسْلِيمًا ﴾

1 *Sūrah al-Aḥzāb* 33:36.

2 *Sūrah al-Aḥzāb* 33:6.

"But no, by your Lord! They will not believe until they make you a judge in their disputes, then do not find within their hearts any dissent to your verdict and submit in full submission."[1]

Not only has the very question of adjudication which is the function of judicial power been established in Islam, but it has also been made a requisite of faith. With the special emphasis (implied by the negative swearing in the Qur'an), it swears that, "The people will not attain faith unless they take you as the judge in their disputes and come to you for adjudication (and not to refer to other people) and when you give judgment, they should not only not object but they should not nurse any grudge or be annoyed. Rather, they ought to accept your judgment faithfully even though it is against them. With total satisfaction and approval, they have to accept your ruling." What is more interesting is that the judgment given by the Holy Prophet ( ) was not based on his knowledge of the Unseen [*'ilm al-ghayb*] and esoteric information. Rather, like any other Muslim judge, he used to make judgment on the basis of evidence, proofs and testimonies in order to adjudicate between two disputing parties. So, because of the weakness and deficiency of documents and proofs, the one who has to be given the right may not get it. Although the right belongs to a certain person, on account of lack of solid evidence, the ruling might not be in his favor. The Holy Prophet ( ) says:

إِنَّمَا أَقْضِي بَيْنَكُمْ بِالْبَيِّنَاتِ وَالْإِيمَانِ.

"Verily, I judge between you on the basis of proofs and testimonies."[2]

That is, "My criterion for making judgment is the judicial standards including testimony, confession, swearing, and the like." Therefore, a just witness may bear witness but unintentionally makes mistake. Or, it may be that a witness does not tell the truth but since the judge (here, the Prophet ( ) is meant) who relies on manifest proofs does not recognize that the testimony is incorrect, his testimony will be accepted and the ruling will be issued accordingly. This verse says that although the decision or ruling is contrary to the truth, believers have to accept it; otherwise, they would not be considered believers because it is the Prophet ( ) who issued it while observing judicial standards.

Here, this question arises, is there in the realm of enactment and execution of laws (legislative and executive powers) or the realm of adjudication and judgment (judicial power) anything higher than what has been demonstrated

1 *Sūrah al-Nisā'* 4:65.

2 *Wasā'il al-Shī'ah*, vol. 27, p. 232.

by these verses regarding how to manage the country and deal with social affairs? Now, on the basis of what has been confirmed by these verses, will there remain any room for the claim that Islam has nothing to do with politics and has not dealt with social affairs?!

The 'minimal' or 'maximal' nature of religion

As we have indicated earlier in discussing the relationship between religion and politics, some suggest that we have to examine this issue from an outward religious viewpoint, and adding that before referring to religion and its content, we have to see what in principle we expect from religion. The answer they give is that we should expect the least from religion—that is what we must do so as to be worthy of paradise, in order not to be sent to the hellfire and in order not be subjected to the chastisement of the hereafter. In a nutshell, our expectation from religion must be elucidation of the issues relevant to the hereafter. Religion is neither responsible for explaining worldly affairs nor has it explained them. For explaining issues of this sort, mankind has to rely on its knowledge and intellect.

In connection with this theory, we should say that as a matter of fact although our life is manifested in two spheres: worldly and otherworldly, i.e. when we are born, our mundane life in this world begins, and it ends with death, and then we enter another world in purgatory [*barzakh*] until the general Resurrection takes place,[1] we have to keep in mind that this does not mean that our life affairs and actions in this world have two parts: one is related to the life in this world while the other is related to the hereafter. In essence, one's deeds and one's behavior that can ensure his good life in the hereafter are but part of the worldly affairs:

أَلْيَوْمَ عَمَلٌ وَلاَ حِسَابَ وَغَدًا حِسَابٌ وَلاَ عَمَلَ.

"Today is a time for work and not for reckoning, and tomorrow is a time for reckoning and not for work."[2]

Therefore, the chief purpose of religion is to set instructions concerning the proper way of behaving in this very world, not to promulgate orders after our departure from this world! The question that arises here is: Does the period of a person's life in this world (say, 60 years) have two parts one is related to this world and the other is related to the hereafter? For example,

1 Of course, we may also include the world in the womb or even prior to that as part of the stages of the existence of man, but in any case, it is clear enough that the two parts of our life consist of the life in this physical world till the time of death, and the life after death and the hereafter.

2 *Bi ar al-Anwār*, vol. 77, p. 419.

are the first 30 years related to this world and the other 30 years to the hereafter?! Or, does each day which consists of 24 hours have two parts: the day and the night and one of them is related to this world and the other to the hereafter?! Or, does the 24-hour day alternately belong to this world and the hereafter?! Or, do in essence, we have nothing in this world which does not belong to the hereafter and do all our actions and moments in this world have an otherworldly nature; i.e. are they such that they can be useful or harmful for the hereafter and have, in one way or another, an effect on our life in the hereafter?

According to the Islamic viewpoint, our otherworldly life is determined by our deeds and conduct in this world:

اَلدُّنْيَا مَزْرَعَةُ ٱلآخِرَةِ.

"This world is the sowing ground for the hereafter."[1]

We have to sow here and harvest there, and it is not correct to separate mundane life from the hereafter. All that we do in this world such as breathing, winkling of the eyes, walking, sitting, sleeping, rising up, looking, building social relations, talking, listening, eating, marital and family relations, the relations between the members of society, relations between government and people, and others can either have useful and beneficial effects or negative and arbitrary effects on our life in the hereafter.

Thus, our life in this world does not have two distinct parts or separate realms—that is, one is related to this world and another to the hereafter.

For example, it is true that eating food is something related to this world but it can be the cause of one's chastisement in the fire of hell or otherwise:

﴿ إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلَوْنَ سَعِيرًا ﴾

"*Indeed those who consume the property of orphans wrongfully, only ingest fire into their bellies, and soon they will enter the Blaze.*"[2]

When such people seemingly eat food and feel satiated with it, they actually consume something that will turn into fire in the hereafter and burn them. In other words, the very foods will torture them in the hellfire. But, if a person takes in food so as to become strong and have the capability of worshiping and obeying God, the act of eating will be considered a kind of worship [*'ibādah*], for which he will be rewarded and be worthy of dwelling in the

1 *Bi ār al-Anwār*, vol. 70, p. 225. [Trans.]
2 *Sūrah al-Nisā'* 4:10.

paradise. Every action performed by part of our body can contribute to our attainment of felicity in the otherworld (if it is for the sake of God) and it can also contribute to our wretchedness (if it is contrary to the command and good pleasure of God). Sometimes, the action can neither have a positive nor a negative effect as in the case of permissible [*mubā*] and lawful [*alāl*] actions whose performance or abandonment entails no punishment or reward. At any rate, our life does not have two distinct parts: one is devoted to the mosque, temple and *usayniyyah*[1] and is related to the hereafter, while the other one is related to ourselves, and has nothing to do with the hereafter or with God. This very false idea, which has been prevailing in the West for many centuries, has caught the attention of many, and is gaining ground in our country and among the Muslims. It is propounded that the place of religion is essentially in the house of worship and its effect will be known in the hereafter and that the rest of the things have no place in the domain of religion. In fact, there is no such a thing in Islam[2] and what we understand from Islam is that man is created in this world so as to achieve felicity or wretchedness, and a person's achievement of felicity or wretchedness is determined by the kind of his actions in this world. If his actions are consistent with the commands of God, he shall attain eternal bliss but if they are contrary to the commands of God, they will bring him eternal damnation.

The fallacy of the theory of 'minimal' or 'maximal' nature of religion is that in reply to the question, "What do we expect from religion?" this theory claims that there are no more than two answers. The first is that we expect the 'maximum' from religion, for example, cooking food, eating food, constructing a house, building an aircraft and a ship, etc. It is clear that this option is false and incorrect. The other answer is that the 'minimum' related to religion is not more than prayer and fasting, and in sum, the relationship between man and God and things related to the hereafter. Also, there is a 'maximum' which is related to the world, including the management of government and politics and these have nothing to do with religion. Since the first option is definitely unacceptable, the second option is naturally established. The fallacy here is to assume that this question has only two solutions and answers. In fact, a third option may be taken into account, which is the right one. It argues that it is not correct to assume that we have to learn everything from religion including how to cook food, wear clothes and construct a house. It also argues that it is equally wrong to assume that

1 *Ḥusayniyyah* is a place for the remembrance of the third infallible Imām, the grandson of the Prophet ( ), Imām al-Ḥusayn (*'a*). [Trans.]

2 Of course, such a thing was not also present in other religions, but after their being distorted or wrongly interpreted, it began to creep in.

religion is merely concerned with the relationship between man and God and specific conditions. The correct thing is that when everything acquires the tint of value, its effect and relation with the hereafter are considered and when its effect on man's ultimate perfection or perdition and on man's proximity to and distance from God is observed, religion will judge. In simple language, it tells us which of our actions is lawful and which of them is unlawful, but it is not concerned with how to perform them. For example, regarding food, it matters not if the food is placed in a chinaware or not, but it says that certain kinds of food are unlawful [*arām*] and consuming them is sinful. Pork is unlawful to eat; meat of the dog is unlawful to eat; it is unlawful to drink alcoholic beverages. How to make alcoholic beverages or how to raise pigs is not the concern of religion, but eating pork or drinking alcoholic beverage has a negative effect on the perfection of man and thus acquiring a negative value. Taking in this kind of food and drink is unlawful and prohibited. Hence, it is true that eating and drinking are worldly affairs, but since they acquire a positive value and are related to man's ultimate perfection, religion has dealt with them and issued a ruling about them. Also, in constructing a house Islam is not concerned whether the windows and doors of the house are made up of aluminum or iron, or whether revetment or brick is used in building its façade, but it says that the house must not be constructed on a usurped land; it must not be built in such a way that it overlooks other people's house, thereby disregarding their right to privacy. So, a house must not be built with money earned through usury and other unlawful means. In wearing clothes and ornamentation, it is not the concern of Islam what style of sewing and what color of textile you choose. However, it says that if you are a male, it is forbidden for you to wear pure silk and golden clothes; both men and women's clothes have to cover their private parts [*'awrah*]. For men, it is forbidden to wear a gold ring and any other gold jewelry. Concerning the amusement, going to a park or to places of interest at the vicinity of the city, or to the beach are not a problem in Islam, but Islam says that you have to avoid seeking amusement through gambling for gambling is unlawful; and it must not be sought through merrymaking because merrymaking is forbidden. So, Islam judges things by observing the moral aspect of every action. It demonstrates the positive or negative value of the action, and whether this action contributes to man's perfection or downfall. Of course, the moral side and positive or negative effect of an action on man's perfection may be so clear that man can grasp them well. Religion needs not to express its view on questions of this kind and God's decree can be discerned by reasoning. This issue is known among jurists [*fuqahā'*] as "rational independences" [*mustaqillāt al-'aqliyyah*]. The *fuqahā'* argue that the mind can independently assess some issues, discern their good or evil, and discover the thing on which the will of

God depends. For example, the common sense of every person dictates that taking and eating a slice of bread of an orphaned child is abhorrent and hideous. Regarding this question, there is no need to cite a Qur'anic verse or a tradition but we can depend on our intellect to discover the will of God in this respect. In most cases, however, man's intellect fails to discern the value of human actions and to what extent they can affect our felicity or wretchedness and make us understand that a certain action (depending on whether it is positive or negative, and its degree of value) is obligatory [*wājib*] or prohibited [*arām*], recommended [*musta abb*] or abominable [*makrūh*], or permissible [*mubā*]. It is at this point that religion has to play an active role and show clearly the degree of impact of a certain action on our ultimate perfection. So, according to what the proponents of the theory of 'minimal' nature of religion say, Islam is concerned not only with the hereafter, but also with trade and transaction, mortgage and renting, marriage and divorce, food and drink, housing and clothing, amusement and recreation, etc. and has defined numerous instructions in this respect. Furthermore, it has even defined for us the year and month and it has not left this affair to us to determine. Suppose that a certain person wanted to rent a house for one year. One should know the answer to the question "How many months and how many days are there in a year?" Can anyone say that a year has 19 months or a month has 19 days (with the total also of 361 days)? Or, have the Qur'an and Islam said something in this regard? The reply is this:

﴿ إِنَّ عِدَّةَ الشُّهُورِ عِندَ اللّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللّهِ يَوْمَ خَلَقَ السَّمَاوَات وَالأَرْضَ مِنْهَا أَرْبَعَةٌ حُرُمٌ ذَلِكَ الدِّينُ الْقَيِّمُ ﴾

"Indeed the number of the months with Allah is twelve months in Allah's Book, the day when He created the heavens and the earth. Of these, four are sacred. That is the upright religion."[1]

The Qur'an and Islam have also said something about the crescent [*hilāl*] and its advantages to the Muslims:

﴿ يَسْأَلُونَكَ عَنِ الأَهِلَّةِ قُلْ هِيَ مَوَاقِيتُ لِلنَّاسِ وَالْحَجِّ ﴾

"They question you concerning the new moons. Say, 'They are timekeeping signs for the people and [for the sake of] Ḥajj'."[2]

This moon which appears in the sky in different shapes helps people to know their devotional and legal issues which are the criterion for

1 *Sūrah al-Tawbah* (or *Barā'ah*) 9:36.

2 *Sūrah al-Baqarah* 2:189.

determining the time of their prayer, fasting and *ajj* pilgrimage and shows them how to manage their legal affairs as, for example, when one wants to say, "I will lend you this sum of money for two *months*," or "I will rent this shop for nine *months*."

Now, can a wise and fair person consider the religion that pays special attention to issues ranging from prayer, fasting, *ajj* pilgrimage, ritual purification [*ahārah*], and ritual impurities [*najāsāt*] to buying and selling, mortgage and renting, marriage and divorce, conjugal relation, children and parents relation, war and peace, and international relations, and to eating and drinking, wearing clothes and ornamentation, house building and recreation, and even determination of the months to have a minimum nature? Is such a religion not political? Is it concerned with social affairs and those pertaining to the administration of society, or only with personal and devotional affairs? Can a rational person accept the idea that the religion which has to deal with things like consuming pork and alcoholic beverages because they have certain effect on man's felicity or wretchedness considers the type of government and management of society's affairs of no effect whatsoever in this respect and so Islam shows no positive or negative opinion about it or about its value? Does, for example, the government of Yazīd[1] not differ from that of the Commander of the Faithful (Imām ʿAlī) (*ʿa*) and has Islam not shown its opinion regarding them? Does it say that the two merely represent two different types: one used to accept and behave this way while the other used to accept and behave that way, and that this issue has nothing to do with religion? Do the type of government of ʿAlī (*ʿa*) and that of Yazīd have no effect whatsoever on the felicity or wretchedness of either of them, or on the felicity or wretchedness of the community they governed, or on their perfection or perdition or on the perfection or perdition of the community they governed, and does this issue represent one of the affairs related to the world, and religion is concerned only with the hereafter and all about the paradise and the hellfire?! Or, referring to the present time, does religion say that the governments that butcher innocent children or bury them in the ground or attack them with bombs and kill them do not differ from the governments whose main concern is serving the deprived, oppressed and downtrodden, and that these two types of government have no effect on the

1 Yazīd ibn Muʿāwiyah (26-62 AH): succeeded his father to occupy the office of the caliphate in 60 AH. He was a young man devoid of knowledge and virtues and was known for his debauchery. Yazīd ruled for three and a half years. In the first year of his rule he killed Imām al-Ḥusayn (*ʿa*) and his votaries at Karbalā' and took the latter's surviving kith and kin captives. In the second year, he ransacked Medina (the seat of the Prophet's rule and his burial site), and in the third year he invaded Mecca. [Trans.]

people's admission to paradise or hell?! The reply to these questions is not difficult; a little consideration will do:

﴿ إِنَّ شَرَّ الدَّوَابَّ عِندَ اللّهِ الصُّمُّ الْبُكْمُ الَّذِينَ لاَ يَعْقِلُونَ ﴾

"Indeed the worst of beasts in Allah's sight are the deaf and the dumb who do not apply reason."[1] **?**

1 *Sūrah al-Anfāl* 8:22.

Chapter 3

The Role of the People in the Islamic Government

One of the fundamental questions in political philosophy is: Who has the right to take charge of government and assume the responsibility of managing the affairs of society? In other words, according to what principle does an individual or a group have the right to prescribe and proscribe in social affairs and people have to obey? This discussion is concerned with the question of "legitimacy" [*mashrūʿiyyah*]. As we previously stated in the discussion on the presuppositions of the theory of *wilāyat al-faqīh*, according to Islam the right to govern intrinsically and originally belongs to God, the Exalted, and no individual or group has such a right unless he or it is granted certain privileges by God. Resting on solid evidence, we believe that God has bestowed this right to the Holy Prophet of Islam ( ) and to the twelve infallible Imāms (*ʿa*) after the Prophet ( ) and to the fully qualified jurist [*faqīh jāmiʿ al-sharāʾi*] during the period of occultation [*ʿa r al-ghaybah*] of the Imām of the Age (*ʿa*). Has this right also been delegated by the Islamic school to all the members of the society? In reply to this question, things like "legitimacy and acceptability" [*mashrūʿiyyah wa maqbūliyyah*] and "the role of the people in the Islamic government and the principle of *wilāyat al-faqīh*" are discussed. Owing to the special importance of these subjects, we shall hereby deal with them in detail.

The meaning of 'legitimacy' [*mashrūʿiyyah*]

As we have already stated, what we mean by *mashrūʿiyyah* here is rightfulness [*aqqāniyyah*]; that is, whether or not the person who is in

charge of government and holds an administrative post has the right to assume the position. Or, regardless of his being meritorious, righteous and just, does he have required legal right and credibility to rule, or not? And regardless of whether or not the laws he is enacting and implementing are good and just laws and gearing toward the general interests of society, does this person have the right in principle to be the executor of these laws?

Given the above explanation, it has become clear that in terms of lexicography, the word *mashrū'iyyah* is derived from *shar'*, but since this word is equivalent to the English word "legitimacy" which stands for "legality" and "rightfulness", it is not exclusive to divine or religious law, religion and religiosity or that the above questions apply only to them. Rather, they apply to any ruler and government. Also, all schools of political philosophy and political philosophers face such questions.

It has also become clear that the view that the word "legitimacy" means "the goodness of law and its compatibility with expediency" proposed by Plato, Aristotle and others is, in our opinion, not correct. This is the purpose of the discussion on legitimacy, which is not whether or not the law is good, complete and capable of ensuring the society's welfare but the focus is on the executor of the law—i.e. what the basis of granting him the right to execute is. Also, the discussion on legitimacy is not on the manner of the implementation of law—that is, assuming that the law is good and without defect—is it implemented well and properly, or the executors lacked the competence required to execute the law, or not? Rather, assuming that both the law and its implementation are totally good and without defect, the question is on the principle by which they hold their posts.

Here the opposite of legitimacy [*mashrū'iyyah*] is "usurpation" [*gha b*] and an illegitimate [*ghayr-e mashrū'*] government means a "usurper" [*ghā ib*] government. Thus, on the basis of our definition of "legitimacy" a government's policy may be good and just but the government is a usurper or illegitimate one.

Acceptability [*maqbūliyyah*]

Acceptability [*maqbūliyyah*] means "people's acceptance". If the people show inclination toward a certain person or group and want him or it to take the sovereignty, and as a result, a government is established on the basis of the people's demand, this government is said to enjoy acceptability [*maqbūliyyah*], otherwise, it cannot be said that it enjoys acceptability. In other words, rulers and governments can be divided into two basic kinds: (1) rulers and governments that exercise sovereignty on the basis of people's consent and approval; and (2) rulers and governments that impose

their sovereignty on the people by force. Acceptability is applicable to the first category.

The relationship between legitimacy and acceptability

The determination of the relationship between legitimacy and acceptability depends on something which we believe is the prerequisite of legitimacy. Obviously, when we suppose that the criterion of legitimacy of a government is people's inclination and public consent and approval, then legitimacy and acceptability will be inseparable. Accordingly, any government which is legitimate enjoys acceptability, and any government which is accepted by the public is regarded as legitimate. Along this line, we cannot assume that a government can be legitimate without the acceptance of the people, or that in spite of the people's acceptance of the government it cannot be legitimate.

Nevertheless, if we take something other than the acceptance of the people as the criterion of legitimacy, then the distinction between legitimacy and acceptability will be possible. It is possible to find rulers and governments that notwithstanding their legitimacy are not accepted by the people. Or, it is possible to find rulers and governments that, in spite of the people's inclination toward them and their being liked by the people, have no legitimacy and are categorized as usurping rulers and governments.

Therefore, our main question is this: "What is the criterion of legitimacy in Islam?" If a clear answer is given to this question, the status of acceptability and role of the people in the Islamic government and *wilāyat al-faqīh* can be explained more lucidly. We shall deal with this issue in the discussion on "the role of the people in the Islamic government".

The role of the people in the Islamic government

What is meant by "the role of the people in the Islamic government"? It is possible to deal with this question from a historical angle. That is, a researcher may study the historical development of governments in Islam from the time of establishing the first Islamic government in Medina by the Prophet of Islam ( ) up to now and what role the people had in their formation, consolidation and expansion. We do not intend here to answer the question from a historical angle. Rather, we want to theoretically examine the issue and elucidate the viewpoint of Islam in this context. In view of the explanations we have given about legitimacy and acceptability, the answer to this question demands examining two other questions. The first is: What is the role of the people in the legitimacy of government without which the government will not be legal, legitimate and rightful? The

other is: What is the role of the people in the materialization of and running the Islamic government? In other words, after it is confirmed that the government is rightful, legal and legitimate, should this government be imposed upon the people by force, or that in case of developing a theory and establishing the Islamic government, the people must give their consent, accept this theory, and choose the Islamic government willingly, and take part in it? As such, two questions arise: (1) What is the role of the people in the legitimacy of the Islamic government? (2) What is the role of the people in establishing the Islamic government and sustaining it to become powerful?

In answering these two questions, we can divide the Islamic history into, at least, three periods. The first is the period of the Prophet of Islam ( ); the second is the period of the infallible Imāms (*ʻa*) and their presence among the people; and the third is the period in which no infallible Imām is present among the people just like this time of ours.

With respect to the time of the Prophet of Islam ( ), there is apparently consensus of opinion that the legitimacy of the government of the Prophet ( ) had nothing to do with the will and view of the people. Legitimacy was something given to him by God without soliciting the opinion and inclination of the people and He Himself has also granted him the right to rule just as he was appointed as His Prophet. Whether there was public consent or not, the Messenger of Allah ( ) is a rightful and lawful ruler and had the people not accepted his government, only it would not have been established, not that the Prophet's legitimacy to rule and the political right granted to him by God would have been lost, or that due to people's disapproval, God would have cancelled His issued decree of granting the Prophet of Islam ( ) political leadership, sovereignty and apostleship. That is, the Holy Prophet ( ) had two separate God-given designations: prophethood and political leadership. If the people had not accepted him and rejected his prophethood, this would not have led to God's annulment of his prophethood and the same is true of designating the Prophet ( ) as a political leader.

Regarding the role of the people in the government of the Messenger of Allah ( ), again, there is apparently no doubt or difference of opinion that the people played a major role in the establishment of the government. That is, the Holy Prophet ( ) did not impose his government on the people by force but the people themselves believed in his prophethood, and willingly and freely accepted his God-ordained government as well as the right to rule which was granted to him by God. As a sign of their acceptance and submission, they paid allegiance [*bayʻah*] to the Prophet ( ), accompanied him offering their lives and properties, set up the pillars of his sovereignty,

and established his government. Therefore, concerning people's role in the legitimacy of the Prophet's ( ) government it was null, but in the establishment of it, they had a vital role to which the assistance of the people is a testimony. Of course, the Unseen and divine favors have their effect in this context and we do not deny this, but what we want to stress is that the establishment of the Prophet's ( ) government is ascribed to the acceptance of the people and their inclination toward, and approval of, his government and sovereignty, not to the use of force. The Muslims who constituted the Islamic society were never compelled or forced. Of course, in that society there were hypocrites [*munāfiqīn*] and they were not sincere in their approval of the Prophet's ( ) government, but since they formed a minority, they dared not declare their existence or express their opposition to it practically and openly.

In any case, situation in the time of the Holy Prophet ( ) does not seem ambiguous and so it is not a moot question.

The next question is: What was the basis of the legitimacy of the Islamic government prior to the time of the Prophet ( )? The Muslims have difference of opinion about this issue which represents a fundamental subject of difference between the Shī'ah and Sunnī brothers. We shall elaborate this issue in the next section.

The basis of legitimacy of government after the time of the Prophet of Islam ( ) according to the Ahl al-Sunnah

The Sunnī brothers believe that the basis of legitimacy of the Prophet of Islam ( ) is "direct designation by God", and it changed after that. Usually, three bases are considered in this respect: (1) consensus of the *ummah*;[1] (2) nomination by the preceding caliph; and (3) decision of the community's elders [*ahl al- all wa'l-'aqd*].

Regarding the consensus of the *ummah*, for example, they believe that the basis of legitimacy of the first caliph, Abū Bakr, is the meeting of the people in which they chose him as the caliph and declared their approval of it. For this reason, his government is thought to be legitimate.

Concerning the second caliph, they believe that the basis of his government is Abū Bakr's appointing him as the next caliph and for this reason, the government of 'Umar is also considered legitimate.

1 *Ummah*: the entire Islamic community without territorial, racial, national or ethnic distinction. [Trans.]

What is meant by the decision of the *ahl al- all wa'l-'aqd* is that a number of the elders of the community who have good knowledge about the issue of caliphate, and are considered political figures would meet, take counsel together and consulting one another, designate a person to the caliphate. This is said to be the basis of the legitimacy of 'Uthmān's government. That is, the decision of the six-man council whose members were appointed by 'Umar led 'Uthmān's assumption of the caliph's post, and for this reason, his government is thought to be legitimate. With regard to the noble verse, *"O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you,"*[1] the Sunnī brothers believe that *uli'l-amr* [those vested with authority] does not refer to a certain person or people and adhere to its literal meaning, i.e. those who are in authority such as the rulers, sultans and kings, and in today's parlance, the heads of states. Some leading Sunnī figures declare in their books that if a person revolted against the caliph and ruler of his time and waged war against him, it is obligatory [*wājib*] to fight and kill him because it is considered a revolt against a rightful caliph, but if that person won the battle and managed to remove the caliph of the time, assume the position of caliphate, and take over, it would be obligatory to obey him because, according to Sunnī figures, the appellation *uli'l-amr* in the pertinent verse of the Qur'an, applies to him.[2] Of course, this view can be regarded as the fourth basis of the Sunnī *'ulamā'* who hold that the criterion of legitimacy is to obey whomever becomes a ruler and takes control of the helm of affairs regardless of the way by which he gains political power even if it was by means of waging war, bloodshed, massacre of people, and violence, and regard opposing him as unlawful [*arām*].[3]

To sum up, the view of the Sunnī brothers regarding the legitimacy of the governments after the Holy Prophet ( ) is centered on the three bases we

---

1 *Sūrah al-Nisā'* 4:59.

2 This view is based on the theory of "*istīlā'*" which is one of the theories on government and politics with which some Sunnī *'ulamā'* such as Imām al-Shāfi'ī, Ghazzālī, Māwardī, Ibn al-Taymiyyah, and others have dealt. For example, Imām al-Shāfi'ī is reported to have said:

من ولّ ألخلافة فاجتمع عليه ألنّاس ورضوا به فهو خليفة ومن غلبهم بالسيف حتّ صار خليفة فهو خليفة.

For more information, see Mu ammad Abū Zahrah, *Tārīkh al-Madhāhib al-Islāmiyyah wa'l-'Aqā'id wa Tārīkh al-Madhāhib al-Fiqhiyyah* [History of the Islamic Schools of Thought and the Doctrines and History of the Schools of Islamic Jurisprudence], vol. 1.

3 See, for example, Sa'd al-Dīn Mas'ūd ibn 'Umar al-Ash'arī al-Shāfi'ī al-Taftazānī (712/1312-793/1390), *Shar al-Maqāsid al- ālibīn* (Istanbul: n.p., 1305 AH), vol. 2, p. 272; 'Alī Mu ammad and Amīr al-Dīn; *Fulk al-Najāt fi'l-Imāmat wa'l- alāt*, 2nd edition (Lahore: n.p.,1950), vol. 1, p. 203. [Trans.]

have discussed, i.e. direct selection of the people, nomination by the preceding caliph, and the decision of the community's elders.

The Shī'ah viewpoint regarding the basis of legitimacy of the rulers and governments after the Holy Prophet ( )

In order to elucidate the Shī'ah viewpoint regarding the basis of legitimacy of the rulers and governments after the Prophet of Islam ( ), we had better divide it into two periods:

1. The period of the presence of the infallible Imāms ('a)

This period extends from 11 AH to 260 AH and in another account, to 329 AH.[1] Like the time of the Prophet ( ), in this period there is consensus of opinion among the Shī'ah that the legitimacy of a ruler and government is determined by God who has designated twelve persons and commanded His Apostle ( ) to introduce them to the people. So, according to this belief of the Shī'ah, the appellation *uli'l-amr* in the verse, *"O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you,"*[2] does not apply to all the rulers and holders of power but to specific persons. This view of the Shī'ah is confirmed by authentic *adīth*s related from the Messenger of Allah ( ) in which it is reported that when the said verse was revealed, his companions [*a ābah*] went to him and asked him about the meaning of *uli'l-amr* [those who are vested with authority]. For example, Jābir ibn 'Abd Allāh, a famous companion of the Prophet ( ), went to the Prophet ( ) one day and said: "O Messenger of Allah! We understand the meaning of *a ī'u Allāh* [obey Allah]. We also understand the meaning of *a ī'u'r-rasūl* [obey the Messenger], but we do not know who *uli'l-amr minkum* [those who are vested with authority among you] are. The Prophet ( ) said: "*Uli'l-amr* are my twelve successors and caliphs, the first of whom is 'Alī" and then he made known to the people the names of the other eleven Imāms (*'a*). A similar *adīth* can also be found in some Sunnī sources.[3] So, according to the Shī'ah, the term *uli'l-amr* refers to the twelve *ma' ūm* [infallible] Imāms. This affair was not decided by the

1 It depends on whether or not we include the period of the Minor Occultation [*ghaybah al-ughrā*] of the Imām of the Age (*'a*) when the Imām (*'a*) had connection with the people through his special deputies.

2 *Sūrah al-Nisā'* 4:59.

3 See Sul ān al-Wā'i īn Shīrāzī, *Shabhā-ye Peshāwār dar Difā' az arīm-e Tashayyu'* [Peshawar Nights in the Defense of the Sanctity of Shī'ism], pp. 995-997.

Its English translation is Sul ān Wā'i īn Shīrāzī, *Peshawar Nights*, trans. Hamid Quinlan and Charles Ali Campbell (New York: Pak Books, 1996), Last Session, available online at http://www.al-islam.org/peshawar. [Trans.]

Prophet ( ) but it is God, the Exalted, Himself who has designated them to bear the mantle of the caliphate and government after the Prophet ( ). The Holy Prophet ( ) had no role whatsoever in designating them. His only duty and role in this context was to convey and impart the order of God to the people:

﴿ يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنزِلَ إِلَيْكَ مِن رَّبِّكَ وَإِن لَّمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ ﴾

"O Messenger! Make known that which hath been revealed unto thee from thy Lord, for if thou do it not, thou will not have conveyed His message."[1]

This verse, which according to the Shīʿah was revealed on the day of Ghadīr Khumm in connection with announcing a rat ʿAlī (*ʿa*) as the caliph clearly proves that God Himself has designated ʿAlī (*ʿa*) for the caliphate after the Prophet ( ), and the Prophet's role in this matter was only to convey this command of God to the people. The same is true of designating the other eleven Imāms (*ʿa*) for caliphate. Therefore, the basis of the legitimacy of the government of the Prophet ( ), i.e. designation by God is the same as that of the infallible Imāms (*ʿa*). Just as we said regarding the Prophet ( ) that the people had no role whatsoever in the legitimacy of his government and their acceptance or rejection had no effect on his legitimacy, the same is true of the infallible Imāms ( ). There is no difference between the two cases. Concerning the Prophet ( ) we have already stated that God has entrusted two positions of responsibility to the Prophet ( ): prophethood [*nubuwwah*] and political leadership. We also stated that if the people had not accepted the Prophet's ( ) apostleship, this would not have rendered his apostleship invalid or prompted God to annul His decree of designating the Prophet ( ) for apostleship. Similarly, if the people had not approved of the Prophet's ( ) government, this would not have prompted God to annul the degree of the Prophet's sovereignty; rather, in the sight of God the Prophet ( ) would have been a rightful and legitimate ruler.

Now, concerning the infallible Imāms (*ʿa*), the same is true, i.e. since the basis of their legitimacy is divine designation, even if the people do not support them or accept their sovereignty, their right to rule in the sight of God shall remain binding and they will remain to be the rightful rulers; with their presence among the people, the sovereignty of others will not be legitimate, legal or rightful. We already said about the Prophet ( ) that the role of the people in the establishment of the Prophet's government was dominant and no force was used in the setting up and consolidation of his rule but the main factor was the Muslims' acceptance and recognition. The

1 *Sūrah al-Mā'idah* 5:67.

same is true of the people's role in the establishment of the infallible Imāms' government. That is, the people had a dominant role and no force or violence was used in claiming their legitimate and legal right; rather, the Imāms (*'a*) took on the responsibility of government when the people themselves went to them and entreated them to take charge of the government.

Given this viewpoint, we think that during the 25 years following the demise of the Holy Prophet of Islam ( ) when a rat 'Alī (*'a*) remained away from the government and others assumed his post, his legitimacy to rule was still in effect and his right to rule did not become invalid, but due to the lack of acceptance of the people, he did not rule. After a period of time when the people themselves went to him and declared that they wanted him to take on the responsibility of government, he did. Referring to the reason why the Imām (*'a*) accepted to be the caliph, he declared:

لَولاَ حُضُورُ ألْحَاضِرِ وَقِيَامُ ألْحُجَّةِ بِوُجُودِ ألنَّاصِرِ... لاَ لَقِيتُ حَبْلَهَا عَلى غَارِبِهَا.

"If people had not come to me, and supporters had not exhausted the argument… I would have cast the rope of caliphate on its own shoulders."[1]

Thus, according to the Shī'ah, there is no difference between the role of the people in legitimacy and their role in the establishment of the government of the Prophet ( ) and that of the infallible Imāms (*'a*); in both cases (i.e. the legitimacy and establishment of the government) they are totally similar to each other.

Recently some Shī'ah writers have proposed the idea that the Holy Prophet ( ) on the day of Ghadīr only introduced a rat 'Alī (*'a*) as a candidate and the people could, if they liked, select him to be a ruler after the Prophet ( ) and that history showed that the people showed no inclination toward his rule. Therefore, the criterion of legitimacy of government after the Prophet ( ) was the people's acceptance and approval.

Yet, when we consider the explicitness of the verse, *"O Messenger! Make known that which hath been revealed unto thee from thy Lord, for if thou do it not, thou will not have conveyed His message,"*[2] the traditions on the commentary of the verse, *"O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you,"*[3] and the speech given by the Prophet ( ) on the day of Ghadīr as well as other abundant and

1 *Nahj al-Balāghah* (Fay al-Islām), Sermon 3.
2 *Sūrah al-Mā'idah* 5:67.
3 *Sūrah al-Nisā'* 4:59.

certain proofs at our disposal, we regard this recently proposed view as absolutely incorrect and we are quite certain of its groundlessness.

2. The period of occultation [ghaybah] and non-presence of the infallible Imāms (ʿa)

If there is no consensus of opinion among the Shīʿah jurists [*fuqahāʾ*], there is certainly almost an overwhelmingly dominant opinion of the Shīʿah *fuqahāʾ* that during the period of non-presence of the infallible Imāms (*ʿa*), just like the time of the Prophet ( ) or the time of the presence of the infallible Imāms (*ʿa*), the legitimacy of government is determined by God, but its actual establishment and stability depend on the people's acceptance and the community's inclination toward it.

To the exclusion of one or two contemporary Shīʿah jurists, all Shīʿah *fuqahāʾ* believe that during the period of occultation [*ʿa r al-ghaybah*] a religious ruler has to be a fully qualified jurist [*faqīh jāmiʿ al-sharāʾi*], who is appointed according to general designation on the basis of a noble decree of the blessed Imām of the Age (*ʿa*) handed down to us in addition to the proofs which are available. The available views and opinions of *fuqahāʾ* show that they all agree about this subject. Of course, one or two contemporary jurists talk about the possibility [*i timāl*] of suggesting that the legitimacy of government during the period of occultation is decided by the people; that is, it is people's consent that grants a jurist the legitimacy and right to rule, and if people do not vote for him, his rule will never be legitimate and not only the establishment of the government of the jurist but also its legitimacy emanate from the people's acceptance and allegiance to the jurist.

It should be noted that the well-known view or the overwhelmingly dominant opinion of the *fuqahāʾ* that the fully qualified jurist [*faqīh*] has the right to rule during the period of occultation by the general designation of the Imām of the Age (*ʿa*) does not mean the Imām's appointment of a specific person or a particular jurist, but that the Imām has set the general descriptions of the jurist who has the right to rule. Now, how can a decision be made on the ruler during a time like ours and other times when we have tens or even hundreds of *fuqahāʾ* who have reached such a position on the basis of the general designation, the government of each of whom will be legal and legitimate? It is obvious that in practice a government can not have tens or hundreds of leaders each of whom independently assumes presidency. It is also clear that such a government would be in a state of turmoil and chaos. So, one of them must be elected for leadership. Here a question will arise, and that is: Who or what authority is to determine who is most appropriate? In this regard, some give the right to determine to the

people. That is, they hold that people's role in the government is more effective than their role in the period of the presence of the infallible Imāms (*ʿa*). During the presence of an infallible Imām, the legitimacy of the infallible Imām (*ʿa*) is determined by God and the same is true of the designation of the person but the establishment of the government of an infallible Imām is dependent on the acceptance and approval of the people. During the period of occultation, however, two of the three phases are conditional upon the opinion and vote of the people. That is, the legitimacy of a jurist is determined by God and it has nothing to do with the acceptance or non-acceptance of the people, but the designation of the specific person and the establishment of his rule depend on the opinion and vote of the people. Therefore, we can say that there are three views regarding the role of the people in the Islamic government during the period of occultation and *wilāyat al-faqīh* system, which are as follows:

1. According to the first view, the government and rule of *faqīh* during the period of occultation are determined by the Divine Command and through the decree of the Imām of the Age (*ʿa*) and the determination of the person must, in a sense, be through the decree of the Imām of the Age (*ʿa*), but the actual establishment of the government of this person depends on the consent of the people.

2. According to the second view, the legitimacy of the government and rule of *faqīh* during the period of occultation is determined by the Divine Command and the decree of the Imām of the Age (*ʿa*), but the determination of the person as well as the establishment of the government of this person depend on the people's opinion and choice.

3. According to the third view which represents a probability, it is suggested that during the period of occultation of the Imām of the Age (*ʿa*), even the legitimacy of *faqīh* and his government depends on people's acceptance.

Now, let us examine these three views to see which of them is consistent with the fundamentals of Islam. Of course, in our discussion of this issue which will come later, we have not forgotten to clarify the Shīʿah viewpoint in this regard. However, it is appropriate to first consider the point below.

Two prerequisites for conducting this research

For conducting such a research, we have to take into account two fundamental things:

1. *The research should be free from prejudgment and it should not be influenced by the prevailing intellectual atmosphere*. Intervention of

prejudgment and influence of the dominant intellectual atmosphere constitute an obstacle on the way of every researcher and research. Psychologists confirm that the unconscious intervention of researcher's inclinations while researching is inevitable. Very often, we see that in spite of the presence of numerous factors, a researcher's attention is focused only on the factors which agree with his hypothesis and so the other factors are unconsciously overlooked. In the science of Islamic jurisprudence [*fiqh*], the jurists call this phenomenon *ijtihād bi'r-ra'y* [*ijtihād*[1] according to one's opinion]. This frequently occurs in the research in which popularity, endearment and social status are sought, or as a result of solitude, animosity and social boycott.

Today, things like freedom and democracy (that is, freedom in its absolute sense which is found in the Western culture and democracy in its conventional meaning which is used in politics with all its intellectual principles) are held in a very high esteem and if someone makes any remark on them, he or she will be a target of harsh criticisms and face different sorts of charges, and sometimes he or she will be subject to discredit. It is obvious that while researching on things which are related, in one way or another, to freedom or democracy, it is quite possible that the researcher who has previous perception of the effects of the promotion of freedom and democracy as well as a critical attitude toward them will encounter prejudgment and interference of the mental factors in the process of research. Nowadays, the secular communities in the West take freedom and democracy as the goddesses of the 20th and 21st centuries and regard them as man's most sacred idols. Therefore, if someone says something critical to them, he or she will face serious perils. We should bear in mind, however, that a true researcher is he who states clearly the findings of his research very honestly, precisely and bravely, and avoid dealing with the marginal problems in the research that make his analyses deviate from what is right.

2. *The researcher should rely upon the sayings and actions of religious leaders and not upon the sayings and actions of the Muslims*. Some people imagine that for knowing the viewpoint of Islam on any subject, we have to refer to the very Muslims or to Muslim societies to see what they think, and consider what they say as the viewpoint of Islam. And in case of their difference of opinions, we would say that the view of the majority is the viewpoint of Islam, or say that Islam has two or more views and their ideas correspond with that of Islam and they are correct.

1 *Ijtihād*: inference of laws on the basis of the general principles of the Qur'an and the *Sunnah*. [Trans.]

In fact, this approach is wrong and unjustifiable. If, for knowing the viewpoint of a certain religion about any subject we refer to the practices and ideas of those who belong to the said religion, undoubtedly most of our conclusions will come wrong. Christianity is a shining example of what we say. We believe that there is a great difference between true Christianity or what has been revealed to a rat ʻĪsā (Jesus) (*ʻa*) represented in "the teachings of the Messiah" and the Christianity in which the Christians believe today. Today's Christianity is replete with distortions which have crept in throughout history. This belief is based on both the dictate of reason and evidence from the Qur'an in a number of verses, such as in *Sūrah al-Mā'idah*, which reads:

﴿ وَإِذْ قَالَ اللَّهُ يَا عِيسَى ابْنَ مَرْيَمَ أَأَنتَ قُلتَ لِلنَّاسِ اتَّخِذُونِي وَأُمِّيَ إِلَـٰهَيْنِ مِن دُونِ اللَّهِ قَالَ سُبْحَانَكَ مَا يَكُونُ لِي أَنْ أَقُولَ مَا لَيْسَ لِي بِحَقٍّ ﴾

"And when Allah will say, 'O Jesus, son of Mary! Were it you who said to the people, "Take me and my mother for gods besides Allah"?' He will say, 'Immaculate are You! It does not behoove me to say what I have no right to [say].'"[1]

The idea of the Trinity, i.e. to believe in the union of God and a rat ʻĪsā (*ʻa*) and to assume that ʻĪsā (*ʻa*) is the son of God is accepted by no rational person although it represents one of the fundamental and basic Christian beliefs.

In Islam too, if, for knowing the viewpoint of Islam regarding a certain issue, we rely on the sayings and practices of the Muslims or on the view of the majority, we will possibly make similar serious mistakes. To clarify the point in question, take for example the Ahl al-Sunnah wa'l-Jamāʻah who form the majority of Muslims. They, in essence, think that there is no infallible Imām after the Prophet ( ), let alone having "twelve" of them. But, as Shīʻah, we have a firm belief that the contrary is true. Furthermore, we do not regard both the belief of our Sunnī brothers and that of us as the true viewpoint of Islam. Instead, we believe that the legitimacy of the rule and government of the twelve infallible Imāms (*ʻa*) after the Holy Prophet of Islam ( ) is the real and sole view of Islam.

As such, the correct approach for knowing the viewpoint of Islam regarding a certain subject is not to refer to the Muslims but to the true leaders of religion, the Qur'an and the books containing solid evidence about their authentic sayings and practices. This point which is very important has to be

1 *Sūrah al-Mā'idah* 5:116.

kept in mind in this research of ours or while conducting similar research projects.

Searching for the correct view about the role of the people in the government during the period of occultation [*ʻa r al-ghaybah*]

Now that we have mentioned the two prerequisites for this research, it is appropriate to examine the correct one of the three stated views about the role of the people in the government during the period of occultation of the infallible Imām (*ʻa*) and to discuss it.

In our opinion, the first of the three mentioned views is correct, and that is, the rule of the *faqīh* during the period of occultation is determined by Divine Command and through the decree of the Imām of the Age (*ʻa*) and deciding on the one who is to be in charge must, in a sense, be through the decree of the Imām of the Age (*ʻa*), but the establishment of the government of this person depends on the consent of the people. The reasons for this claim of ours are as follows:

Taking into account the Islamic perspective, we believe that God is the Cause of the creation of all beings and the universe, including human beings. It is He who has covered all creatures with the garment of existence and endowed them with life. Whatever is in the heavens and the earth belongs to Him and He is the true Master of them all:

﴿ فَإِنَّ لِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الأَرْضِ ﴾

"To Allah belongs whatever is in the heavens and whatever is on the earth."[1]

According to the Islamic thought, all human beings are servants of God, and He is their Owner. This ownership [*mulk*] is neither nominal nor conventional; it is real ownership [*mulk-e aqīqī*]. That is, we do not, in reality, own any single aspect of our existence. Our entire existence is His and we do not own any single cell of which our body consists. Moreover, every person admits that it is not allowed to use or take over others' property without their permission, and regards it as an undesirable and unbecoming act. Likewise, if someone takes something over from us (for example house, car, shoes, clothes, etc.) without our permission and consent, we will be annoyed and we will complain very loudly and feel we are wronged. This judgment of ours is based on the rational principle that taking over the property of others is an undesirable and unbecoming act.

1 *Sūrah al-Nisā'* 4:131.

Hence, if the entire universe including human beings is God's 'real property' and if the entire existence of beings and motes belongs to Him and they have nothing of their own, and if every rational person confirms that the use of others' property is an unpleasant, loathsome and unjust act, it follows that no human being has the right to exercise authority over himself or herself or others without God's permission. Naturally, to arrest and imprison, to fine and levy taxes, and to execute, and in sum, to exercise authority and impose different limitations in the behavior and life of individuals and groups are of the essence in governing. So, to exercise his authority, a ruler must have the consent of the Real Owner of the human beings who is God; otherwise, all his acts, according to the dictate of reason, are undesirable and unjust and regarded as acts of usurpation. According to the proofs at our disposal, God has granted this right to the Prophet of Islam ( ) and to the infallible Imāms (*ʿa*) who came after him:

﴿ النَّبِيُّ أَوْلى بالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ ...﴾

"The Prophet is closer to the believers than their selves."[1]

﴿ يَأَيُّهَا ٱلَّذِينَ ءامَنُوا أَطِيعُوا ٱللَّهَ وَأَطِيعُوا ٱلرَّسُولَ وَأُوْلِى ٱلأَمْرِ مِنكُمْ ﴾

"O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you."[2]

Also, according to the proofs substantiating *wilāyat al-faqīh*, such right has also been given to the fully qualified jurist [*faqīh jāmiʿ al-sharāʾi*] during the period of occultation and he has been designated by Divine Command through the decree of the Imām of the Age (*ʿa*) to rule, but there is evidence that this right has been given to other people including common Muslims or members of society. Of course, this is called general designation [*na b ʿāmm*] which means that no specific person has been appointed by certain qualities have been fixed for the person who is worthy of holding the post. Now, it is clear that a government with different distinct rulers is inconceivable and in case there exist different independent rulers, no "single" government can be set up and the only alternative will be to elect one of them. This choice is indeed similar to staying in search for the crescent [*hilāl*] according to which the first day of the month is fixed, or it is similar to determining on the *marjaʿ-e taqlīd* [religious reference authority]. Let us expound this point:

1 *Sūrah al-Aḥzāb* 33:6.
2 *Sūrah al-Nisāʾ* 4:59.

As Muslims, it is incumbent upon us to fast in the month of Rama ān. But in order to know whether or not the month of Rama ān has begun, we have to sight the crescent to see whether or not the crescent of the first night of the month has appeared in the sky. Once the crescent is sighted we will start to investigate to decide [*kashf*] whether the month of Rama ān has begun and to decide if we have to fast. In this case, we must not give "legitimacy" to the month of Rama ān; that is, to assume that the month of Rama ān has come. Rather, we have to make sure whether the crescent of the first night of Rama ān has come out or not. If we become quite certain that it has, then the month of Rama ān has come, and if it has not come out, then the month of Rama ān has not begun yet. Here, all we have to do is to 'discover' whether the appearance of the crescent is definite or not.

Or, with regard to *taqlīd* [emulation],[1] we believe that since not all Muslims are expert in identifying religious rulings, every Muslim has to emulate or imitate a person who has such an expertise, namely, the *mujtahid*.[2] Also, when a person wants to choose someone as his or her *marja' al-taqlīd*, this does not mean that this person wants to give 'legitimacy' to the *marja' al-taqlīd* and have him a *mujtahid*. Prior to our research, the one who is to be decided upon is either a really worthy to be *mujtahid* or not and thus, he is not fitted to be a *marja' al-taqlīd*. In our investigation, our only want will be to 'discover' whether he is fitted to this post or not. Hence, our concern is not 'to produce' such worthiness but only 'to discover and identify' it.

The same is true of the case of deciding on *walī al-faqīh* [jurist-guardian]. That is, it is only the general designation given to him by God through the Imām of the Age (*'a*) that a fully qualified jurist can have the right and legitimacy to rule. Our task is only to identify the jurist who really has such a right prior to our research. Given this, it follows that deciding on the deputies in the Assembly of Experts [*majlis-e khobregān*] by the people and thereafter choosing the Supreme Leader by these deputies is something whose essence is other than what we have stated. That is, it will not be discovering and identifying the person who has the qualifications and legitimacy to assume the position of *walī al-faqīh* and Supreme Leader. As such, both the principle of legitimacy of the *walī al-faqīh* and designating him are, in a sense, ascribed to the Imām of the Age (*'a*). Of course, this 'discovery' does not mean that a specific person has been identified by the

1 *Taqlīd* [emulation or imitation]: The adoption of the authoritative rulings of a religious scholar [*marja' al-taqlīd*] of proven learning and piety in matters of religious practices. [Trans.]

2 *Mujtahīd*: an authority on the divine law who practices *ijtihād*, i.e. "the search for a correct opinion in the deduction of the specific provisions of the law from its principles and ordinances." [Trans.]

Imām of the Age (*ʿa*) but as we said earlier, this case is like that of the discovery and identification of the *marjaʿ al-taqlīd* in which also no specific person has been fixed for *taqlīd* but a set of general qualifications has been defined, and whoever possesses them can become *marjaʿ al-taqlīd* and his *marjaʿiyyah* [supreme religious authority] will be accepted by God and the Imām of the Age (*ʿa*).

It has been made clear so far that just like in the time of the presence of the Prophet ( ) or the infallible Imāms (*ʿa*), the people during the period of the occultation of the infallible Imām (*ʿa*) have no role in giving legitimacy to the government of the *faqīh* (neither regarding the principle of legitimacy nor regarding the decision on the qualified person).

As for the establishment of the government and rule of the *faqīh* during the period of the occultation of the infallible Imām (*ʿa*), it is, we should say, entirely dependent on the acceptance of the society and approval of the people. That is, it is the people or the Muslims who pave the ground for the establishment of this government. So, if the people do not want an Islamic order, it will not see the light, and in setting up his government the *faqīh* never resorts to the use of force. Rather, like all prophets and Imāms (*ʿa*) he can embark on establishing his government only in case the people show their inclination to his rule. In this case, like all divine precepts and decrees, the people may accept and obey him, or they may reject and disobey him. Of course, throughout history, it has been incumbent on the people to submit to the divine rule and government of the prophets and the Imāms (*ʿa*) and to officially recognize their right to rule; otherwise they will be considered sinful before God.

Reviewing and commenting on two other views

Those who believe that during the period of occultation of the Imām of the Age (*ʿa*) the people have a certain role in giving legitimacy to the Islamic government and rule of the *faqīh* (whether concerning the principle of legitimacy of the rule of the *faqīh* or in deciding on the qualified person) introduce some propositions in this regard. For example, they say that during the period of occultation of the Imām of the Age (*ʿa*), no law or decree is found in Islam about setting up government and this affair is among the cases which the people themselves determine. For clarifying this statement, we have to point out that the Islamic law contains cases whose ruling has been defined by the Islamic law as in the ruling which includes the ruling on such things like the obligatory [*wājib*], the unlawful [*arām*], the recommended [*musta abb*], the abominable [*makrūh*], and the permissible [*mubā*]. Also, there are cases about which there is no ruling in the Islamic law, Qur'anic verses or *adīth*s. In such cases, *fuqahā'* usually

rely on certain principles and rules, and say that the things about which we have received no ruling from God and about which there is no enjoinment or prohibition are considered permissible [*mubā*]. That is, to do them or not to do them is the same, i.e. neither of them has preponderance over the other. You are allowed to do either of them. Concerning the government of the *walī al-faqīh* during the period of occultation, some maintain that since no specific enjoinment or prohibition is found in the Qur'an about this affair, and the title *uli'l-amr* [those vested with authority] referred to in the verse, *"Obey Allah and obey the Apostle and those vested with authority among you"* is ascribed to the twelve infallible Imāms (*'a*), it follows that the sacred Islamic law has not stated anything about the issue of government during the period of occultation, and so the people themselves are to decide on such a thing.

It is sometimes claimed that on the basis of the juristic rule, "The people have full control over their possessions,"[1] the people can do with their life and property whatever they like and they have the right to delegate this right to the others or appoint them as their proxies with respect to their properties.[2] Consequently, during the period of occultation, it is the people who are to choose the ruler and the objective of holding general elections is that the people delegate the right they have over their lives and properties to a certain person.

Now, let us comment on these two propositions. Concerning the assumption that according to Islam the people have full control over their own lives and properties and have the right to do with them, we pose the question: Who says that Islam has given such a right to the people? On the contrary, all Muslims know that man has no right to do whatever he likes or to do with himself whatever he likes. We have no right to blind our eyes; we have no right to amputate our hands; we have no right to burn any part of our body or destroy it. Likewise, regarding our property and wealth, we do not have the right to use them the way we like. For example, we cannot say that "This car or this house is mine and whenever I want I can set it on fire and burn it." For this reason, committing suicide is unlawful [*arām*] in Islam. And it is for this reason that man has no right to do whatever he likes with himself. As we have said earlier, according to Islam, we are all servants and subjects of God, and since our existence totally belongs to Him, we have no

---

١ أَلنَّاسُ مُسَلَّطُونَ عَلىٰ أَمْوَالِهِمْ.

2 Here, if they delegate this right to somebody, it will no longer be reclaimable and returnable. But if they appoint somebody as their proxy, they can annul the deputyship and reclaim the right if they like at any time. In political thought, both views have been proposed regarding the manner of the people's choice and its nature.

right to do whatever we like even with regard to ourselves without His permission. So, how could we, who do not have any right to do whatever we like even with regard to ourselves, delegate this right to others and enable them to exercise authority over the society and do whatever they like with the lives and properties of individuals and interfere in their affairs?

How could we delegate to others our right or that of the people and enable them to enact and execute the laws which are prerequisite for every government, if in essence, the right to determine rulings and laws belongs to God, and their being expressed in the Islamic law [*sharī'ah*] means that when we want to determine the laws related to ourselves we have to refer to the Real Owner and act according to His will?

The guardianship [*wilāyah*] which we delegate to the *faqīh* is something that God has granted to the *faqīh* and the Imām of the Age (*'a*) defined, and so it is not something which the people grant to him. If we take the juristic principle "The people full control over their possessions" to mean that the people have the right to grant guardianship and authority to someone and give legitimacy to anyone whom they like, then if the people happened to reject the guardianship and governance of the *faqīh* and elected a non-*faqīh*, say a doctor or an engineer, as a leader, would his government be legitimate in the sight of God and His Messenger ( )? If indeed the choice of the people is the criterion for legitimacy, will, if the people voted for such people like Yazīd, Hārūn al-Rashīd, Ri ā Khān Pahlavī, and the like, their government be legitimate and rightful in the sight of God and His Messenger ( )?

We ask those who believe that the people's opinion is the criterion for legitimacy: If the people decide to reject our present Constitution which has been codified around the axis of *wilāyat al-faqīh*, what will your stance be? Will you say that this is the view of Islam? Do those who claim they follow the line of the Imām and sometimes wittingly or unwittingly make advantage of the words of a rat Imām Khomeinī (*r*),[1] "The vote of the nation is the criterion," suppose that if the people decide to reject the principle of *wilāyat al-faqīh* and exclude the principle from our Constitution, we should say that the vote of the nation is the criterion, and that the view of Islam corresponds with the opinion of the people? Or else, we say that it is inferred from what Imām Khomeinī said in various occasions that the *wilāyat al-faqīh* is an irrevocable principle and for this reason it is one of the Constitution's "basic principles"?

1 The abbreviation, "*r*" stands for the Arabic invocative phrase, *raḥmatullāh 'alayh, raḥmatullāh 'alayhā*, or *raḥmatullāh 'alayhim* [may peace be upon him/her/them], which is used after the names of eminent pious people. [Trans.]

Regarding the other proposition that since God, the Exalted, who is the Law-Maker, has not said anything about the government during the period of occultation of the infallible Imām (*ʿa*), it is among the issues which depend on the decision of the people, we say that this claim holds no water as we shall be in the next chapter which examines the proofs substantiating the *wilāyat al-faqīh*. We will see that according to the proofs at our disposal, the Law-Maker has defined our duty in relation to the government during the period of occultation of the infallible Imām (*ʿa*).

Citing the issue of *bayʿah* [allegiance] which was quite usual and common at the outset of Islam, some try to support the argument that the legitimacy of Islamic ruler is based on the choice and vote of the people. For example, they say that the Messenger of Allah ( ) asked the people in Ghadīr Khumm to pay allegiance to a rat ʿAlī (*ʿa*) and claimed that if the legitimacy of the government of a rat ʿAlī (*ʿa*) had indeed nothing to do with the vote of the people, then why did the Prophet ( ) ask the people to give their allegiance to the Imām (*ʿa*)?

When we investigate the status of *bayʿah* in the early history of Islam and the Arabs of that time and delve into the sayings of the Holy Prophet ( ) and the noble verse revealed on the day of Ghadīr Khumm, which reads, *"O Messenger! Make known that which hath been revealed unto thee from thy Lord, for if thou do it not, thou will not have conveyed His message,"*[1] we will find that *bayʿah* is, in fact, a responsibility on the part of the givers of allegiance through which they show their obedience and pact of brotherhood to the person to whom the allegiance is given. That is, it is a means of expressing readiness to assist and cooperate with the ruler and commander, and this has nothing to do with giving legitimacy and granting the right to someone to become a ruler. As a matter of fact, through *bayʿah* one expresses exigency to obey the legitimate and rightful ruler, and not to give legitimacy.

To sum up, in accordance with the authentic Islamic basis, the legitimacy of *walī al-faqīh* is determined through general designation [*na b-e ʿāmm*] by the infallible Imām (*ʿa*) and the establishment of the *faqīh*'s government and rule entirely depends on the people's consent. This is exactly the same as that which we already stated about the legitimacy of the government of the Prophet ( ) and the infallible Imāms (*ʿa*) and about the role of the people in establishing their government. **?**

1 *Sūrah al-Mā'idah* 5:67.

Chapter 4

Arguments for *Wilāyat al-Faqīh*

Before dealing with the proofs substantiating *wilāyat al-faqīh*, it is appropriate to explain the meaning of *wilāyat al-faqīh* first so as to clear up any ambiguity about it and in the light of the clear picture we have, we can examine its proofs.

Ontological guardianship [*wilāyat al-takwīniyyah*] and legislative guardianship [*wilāyat al-tashrī'iyyah*]

Perhaps, there is no need to note that by *wilāyat al-faqīh*, we do not mean the ontological guardianship. Rather, we try to prove the legislative guardianship of *faqīh*. *Wilāyat al-takwīniyyah* which means having authority over the entire universe and the rules governing it is basically related to God, the Exalted, the Creator of the entire universe, the order of creation and the laws governing them. Sometimes, certain examples of this guardianship are granted by God to some of His servants, whereby they can exercise authority over whatever exists in the universe. The miracles and wonders shown by the prophets (*'a*) and divine saints [*awliyā'*] are among these examples. According to the Shī'ah, the most extensive example of the ontological guardianship granted to the servants of God is that which God granted to the Prophet of Islam ( ) and the infallible Imāms (*'a*) after him. In any case, in our discussion of *wilāyat al-faqīh* we are not concerned with the idea of exercising authority over the system of creation and the laws of nature though sometimes a *faqīh* having such a quality may have miracles [*karāmah*].

The question of the management of society which concerns the Prophet ( ) and the infallible Imāms (*ʿa*) as well as the *faqīh* is connected to their legislative guardianship [*wilāyah al-tashrīʿī*]. That is, it is the question to which the Qur'an refers in some verses, such as "*The Prophet is closer to the believers than their selves*"[1] and in some *adīth*s, such as "Of whosoever I am Master [*mawlā*], then ʿAlī is also his Master [*mawlā*]." Legislative guardianship has a legal basis. That is, a person can, through laying down laws and executing them, have authority over the people and members of the society, and it is incumbent upon them to submit to him and to comply with the laws. The meaning of "*The Prophet is closer to the believers than their selves*" is that the decision made by the Prophet ( ) regarding a Muslim or Islamic society is binding and has precedence over the decision they themselves make concerning their personal and individual affairs. In other words, the society is in need of some center of power that has the power and right to decide on social issues and his decision is final. In the aforementioned verse, God has specified this epicenter of power which has dominance over all. As such, *wilāyat al-faqīh* does not mean one's guardianship over the insane and ignorant; rather, it means the legal authority and right of law-making, decision-making and execution which we think the *faqīh* has regarding the administration of the society's affairs and social issues. For this reason, we regard him as superior to others, and since right and duty are inseparable and intertwined with each other, once proved the *faqīh* has this right, it follows that people have to respect this right and obey the *faqīh*'s decisions, orders and rules. As such, on the basis of the verse, "*The Prophet is closer to the believers than their selves,*" if the Prophet ( ) orders a person to go to the battlefield, he or she has to obey even though he or she does not like to go. Or, if the Prophet ( ) orders a person to contribute for the battlefront even though he or she has given *khums*[2] and *zakāt*[1] and no religious levy is due to him or her, it is incumbent

1 *Sūrah al-Aḥzāb* 33:6.

2 *Khums*: literally means *one-fifth*. According to the Shīʿah school of jurisprudence [*fiqh*], this one-fifth tax is obligatorily levied on every adult Muslim who is financially secure and has surplus in his income out of annual savings, net commercial profits, and all movable and immovable properties which are not commensurable with the needs and social standing of the person. *Khums* is divided into two equal parts: the Share of the Imām [*sahm al-Imām*] and the Share of the *Sayyid*s/*Sādāt* (descendants of the Prophet) [*sahm al-Sādāt*]. Accordingly, the Share of the Imām is to be paid to the living Imām, and in the period of occultation [*a r al-ghaybah*], to the most learned living *mujtahid* who is the giver's *marjaʿ al-taqlīd* [Source of Emulation]. The other half of the *khums*, the Share of the *Sayyid*s/*Sādāt*, is to be given to needy pious *Sayyid*s who do not have financial resources to lead a respectable living. For more information, see Sayyid Muḥammad Rizvi, *Khums: An Islamic Tax*, http://www.al-islam.org/beliefs/practices/khums.html. [Trans.]

on him or her to obey and has no right to object. The late Imām Khomeinī (may Allah elevate his station) often cited this example in his lectures: "If an Islamic ruler asks me to hand this cloak of mine over to him, I would obey and say, "With pleasure". Whenever the *walī al-faqīh* sees that the expediency of the Islamic society demands that I should hand over to him my cloak, I have to obey and give it over." This is the true meaning of *wilāyat al-faqīh* which characterizes our culture and it is taken for granted. Men and women, young and old, rural and urban, are familiar with it and accept it. There are numerous cases, which support this fact, the most famous of which is the tobacco controversy and the religious edict issued by the late Mīrzā-ye Shīrāzī.[2] All the Shī'ah at that time believed that the *'ulamā'* and *mujtahidīn* are the successors of the Imām of the Age (*'a*) and if the successor of the Imām (*'a*) says something he has to be obeyed. Therefore, when the late Mīrzā-ye Shīrāzī declared, "Today, the use of tobacco is unlawful [*arām*] and tantamount to war against the Imām of the Age (*'a*)" they threw away and smashed their hookahs, and no one knew what happened. Until the day before, the use of tobacco had been lawful and was not a problem. Does God's decree on the lawful [*alāl*] and the prohibited [*arām*] change?! Everybody, including the *'ulamā'* and the *marāji' al-taqlīd* who issued religious edicts [*fatāwā*] regarded themselves bound to observe this decree of Mīrzā-ye Shīrāzī.

Now, in light of this explanation and clarification of the true meaning of *wilāyat al-faqīh*, we will, after discussing one point, embark on the proofs substantiating the idea of *wilāyat al-faqīh*.

Is *wilāyat al-faqīh* founded on imitation [*taqlīd*] or on research [*ta qīq*]?

Since the issue of *wilāyat al-faqīh* is an offshoot of the question of Imamate [*imāmah*], some say it is among the subjects which are relevant to scholastic theology [*'ilm al-kalām*]. *'Ilm al-kalām* technically means the science dealing with the subjects related to the principles of religion [*u ūl al-dīn*], i.e. the subjects about God, prophethood [*nubuwwah*] and the Day of Resurrection [*ma'ād*]. After establishing the idea of prophethood in *'ilm al-*

1 *Zakāt*: the tax levied on various kinds of wealth and spent according to the injunctions specified in *Sūrah al-Tawbah* 9:60. [Trans.]

2 Āyatullāh Mīrzā asan Shīrāzī (d. 1312 AH/1894): the *mujtahid* who declared in December 1891 that "the use of tobacco is unlawful [*arām*] and tantamount to war against the Imām of the Age (*'a*)" after the production and marketing of tobacco in Iran had been made the monopoly of a British company. In response to his declaration, all of Iran boycotted tobacco, forcing the cancellation of the concession in early 1892. See Hamid Algar, *Religion and State in Iran in 1785-1906: The Role of the Ulama in the Qajar Period* (Berkeley and Los Angeles: University of California Press, 1969), pp. 205-215; Nikki Keddie, *Religion and Rebellion in Iran: The Tobacco Protest of 1891-92* (London: Frank Cass, 1966). [Trans.]

kalām, this question arises: "After the Prophet of Islam ( ), what becomes of the issue of leadership of the Islamic society?" Following this question, the question of Imamate can be discussed, and according to the proofs at their disposal, the Shīʿah believe that the infallible Imām has the right to lead the society after the Prophet of Islam ( ). After establishing the idea of the Imamate of the infallible Imāms (*ʿa*), this question is posed: "In a time like ours when we practically have no access to the infallible Imām, what must the people's stance with regard to the leadership of the Muslim society be?" It is in pursuit of this question that the question of *wilāyat al-faqīh* is discussed. Since it is commonly known that "Imitation [*taqlīd*] in matters connected to the principles of religion is not permissible," some imagine that because the issue of *wilāyat al-faqīh* is, as stated above, among the subjects related to the principles of religion and scholastic theology, it follows that this issue, like the question of proving the existence of God or the prophethood of the Prophet ( ), is among the issues which one has to investigate [*ta qīq*] by himself, and in sum, it is not a matter of imitation [*taqlīd*].

As a matter of fact, this notion is not correct, firstly, because it is not correct to assume that it is not permissible for one to practice *taqlīd* in every issue connected to scholastic theology or to the principles of religion, and one has to prove it through solid and convincing arguments. In fact, there are so many theological issues in which people have to practice *taqlīd* and see the view of an authority about them. For example, the issue of questioning the dead person on the "first night in the grave" is among the subjects related to the Day of Resurrection [*maʿād*]. Yet, concerning such questions like what, in essence, is the "first night in the grave" and if, for instance, a person is buried at daytime shall we wait until the night comes and then we can say that it is his or her first night in the grave? If the corpse is burnt and turned into ashes and the ashes were blown by the wind or fell prey to rapacious animals and nothing of it remains to be buried, will the dead person have no "first night in the grave"? In addition to tens of other questions about the "first night in the grave," most of us have not investigated by ourselves nor do we have sufficient expertise to do research on them. We have known the answers to such questions through reading books or listening to the lectures of the great figures whom we trust. Besides, although *wilāyat al-faqīh* is, in a sense, a theological issue and among the subjects pertaining to prophethood and Imamate, it is not among the issues about which every person can research because it has a special character. Thus, one has to rely on a trustworthy expert's opinion.

Secondly, although the issue of *wilāyat al-faqīh*, which is considered an offshoot of the discussion on Imāmate, is a theological issue and among the

subjects pertaining to the principles of religions, regarding the idea that it is incumbent upon the people to obey the decree of *walī al-faqīh*, what the duties of the *walī al-faqīh* are, what his jurisdiction is and similar other questions, it is considered a juristic issue. For this reason, the *fuqahā'* have dealt with it in their books of *fiqh* and in juristic discourses. There is no doubt that concerning the issues related to the Islamic jurisprudence (or, the very branches of religion [*furū' al-dīn*]), *taqlīd* is permissible and it is obligatory for most people.

At any rate, it is necessary to notice that the issue on proving *wilāyat al-faqīh* is a specialized one, the investigation of which requires particular tools and expertise. However, since many people ask about it and it has become one of the society's current and basic issues, we shall hereby try to enumerate the proofs substantiating *wilāyat al-faqīh* in a relatively simple manner. It is obvious that for further explanation, one has to refer to the books, magazines and discussions which deal with this issue.

The proofs substantiating *wilāyat al-faqīh*

The proofs which are introduced to establish *wilāyat al-faqīh* are classified as intellectual [*'aqlī*] and transmitted [*naqlī*]. It is worth noticing that the Shī'ah *'ulamā'* believe that in proving a religious injunction, we can make use of four types of proofs: the Qur'an, *Sunnah* of the Infallibles (*'a*), consensus [*ijmā'*], and reason [*'aql*]. According to the Shī'ah *'ulamā'*, in proving a religious injunction, our proof should not necessarily be based on a Qur'anic verse or a *adīth* but a religious injunction in Islam can be established through reasoning and a sound intellectual proof. As such, according to Islamic jurisprudence, citing an intellectual proof for proving *wilāyat al-faqīh* is in no way less important than citing transmitted proofs, such as Qur'anic verses and *adīth*s. Here, we shall mention two intellectual proofs and two transmitted proofs and thereby try to prove *wilāyat al-faqīh*.

Intellectual proofs

The first intellectual proof

In brief, this proof consists of the following premises:

1. For ensuring individual and collective welfare for mankind, and avoiding chaos, turmoil and corruption and decadence of the social order, it is necessary for a society to have a government.

2. The ideal government in its loftiest and best form is the government which is ruled by an infallible Imām.

3. For this reason, when it is not possible to achieve a necessary and exigent thing in its ideal and optimum level, we should achieve what is nearest to the ideal level. Consequently, when the people are deprived of the blessing of the government of the Infallibles (*ʿa*), their aim should be achieving what is nearest to the ideal government.

4. The nearness of a government to the government of the Infallibles [*maʿ ūmīn*] is crystallized into three main things: first, having knowledge of the general rulings of Islam (expertise in Islamic jurisprudence [*fiqāhah*]); second, having moral and spiritual excellence whereby one can curb his carnal desires, physical threats and worldly temptations (God-wariness [*taqwā*]); third, having expertise in the management of society represented in such qualities and attributes like social and political acumen, awareness of the international issues; courage vis-à-vis the enemies and offenders, right judgment in identifying the priorities, etc.

To sum up, during the period of occultation of the infallible Imām (*ʿa*), the one who is most efficient and best of those who enjoy the requirements is to assume the leadership of the society and by holding the highest post of the government, he is to organize its organs and direct them toward perfection.

Now, we shall elaborate this proof and each of its premises:

The first premise of this proof is the well-known discussion on the necessity of the existence of government with which we have dealt in the previous chapters. In the mentioned discussion we pointed out the presuppositions of the theory of *wilāyat al-faqīh*, stating that one of this theory's presuppositions acknowledges the urgent need of society for government and we said that the vast majority of political thinkers and others accept this principle and none raises doubt about it except anarchists and Marxists who have certain views about it. In any case, there are numerous solid grounds for the society's need for government which confirm this point. In this regard, the Commander of the Faithful, ʿAlī (*ʿa*) says:

لاَ بُدَّ لِلنَّاسِ مِنْ أَمِيرٍ بَرٍّ أَوْ فَاجِرٍ.

"People cannot do without ruler, good or bad."[1]

This statement clearly indicates the urgent need of society for government.

The second premise of this proof is clear and it needs no elaboration. What is meant by the "Infallibles" [*maʿ ūmīn*] here is the Prophet ( ) and the twelve Imāms (*a*) who, in our belief, have the characteristic of *i mah* [infallibility]. That is, they do not commit any sin or mistake intentionally or

1 *Nahj al-Balāghah*, Sermon 40.

unintentionally, and their behavior, action, thinking, and decision are free from imperfection or mistake. This peculiarity makes them most suitable to take charge of government because rulers may either stray from the path of truth and justice and corrupt the society due to their involvement in personal and carnal interests, or on account of their mismanagement, blunders, and incorrect and unsound decisions, they may give way to the prevalence of corruption and wastage of the society's interests. But an infallible person neither commits sins nor makes mistakes in thought and action because he enjoys the *ʿi mah* [infallibility]. Meanwhile, it is argued in *ʿilm al-kalām* that the characteristic of *ʿi mah* is also rooted in abundant knowledge and utter insight which are attributed to the Infallibles (*ʿa*). In other words, the *maʿ ūm* is a perfect man who, by virtue of the possession of intellect and knowledge par excellence, does not consciously or unconsciously fall prey to the snare of any sin and mistake. Therefore, the reason of every sensible person confirms that the government of such a person enjoys all the virtues of an ideal and desirable government and achieves the highest possible welfare for the society.

The third premise of this argument is, perhaps, the most significant one. In explaining this premise, we had better cite one or two examples:

Let us assume that ten persons—from among the most distinguished personalities, each of whom is so important and useful for the society—are on the verge of drowning and if we use all the facilities, equipments and rescuers at our disposal, we can save only seven of them and the remaining three will drown. What will, in this case, the dictate of a sound mind be? Will it be sensible to say that since it is impossible to save all the ten persons for three of them will definitely drown, there is no need to attempt to rescue them? Or, will it be sensible to say that if it is possible to save all the ten, then action has to be taken to rescue them all but if it is not possible to do so, then if we want to rescue the remaining seven it makes no difference if we save all the seven, or only six or five of them, or even only one of them and if it is not possible to save the ten, what is important is the very idea of setting out to rescue them, but in spite of the possibility of saving the remaining seven, it makes no difference if we set out to save all of the seven or, for example, just two or even one of them? Or, will it be sensible that if it is not possible to save all the ten persons as an absolute and perfect expediency, we have to do our best to save all the remaining seven persons (as the nearest possible level to the absolute and perfect expediency) and we are not allowed to neglect even one of them, let alone disregarding, for example, six or five persons and making no effort to rescue them? The definite dictate of reason is the third option and all other options will be rejected by reason.

Or, let us suppose that a person was attacked by a shark in the sea, and we know that even if we did our best to rescue him, one or both of his legs would be lost. In sum, even if we succeeded in rescuing him, some parts of his body would be lost.

The question is: Regarding this scenario, what will be the dictate of reason? Will it suggest that since we cannot get him out safe and sound, then it is of no use attempting to rescue him and we should only sit and watch what is going on? Or, will the reason of every sensible, conscientious person dictate that although one or both of his legs will certainly be amputated and some parts of his body will be damaged, in any case, he has to be rescued, and the impossibility to rescue him safe and sound (as a hundred percent expediency) is no excuse for not attempting to rescue a one-legged person (as an incomplete expediency) and to watch how his legs devoured by the shark? Now the answer is clear.

The dictate of reason in the stated two examples is, in reality, based on a general rule which is accepted by reason and it is the very rule that comprises the third premise of our argument, and that is, *if it is impossible to obtain a necessary and exigent thing at its best, the nearest possible level to it has to be sought*. In fact, our present discussion is a manifestation of this general rule. The expediency of having a government is a necessity which no one can deny. The ideal and desirable type of this expediency is not attainable except in the government of the Infallibles (*ʿa*). But when we do not practically have access to the Infallibles and their government, and we cannot attain expediency in its best, should we sit and do nothing? Or, are we allowed in spite of the possibility of attaining the nearest level to the ideal expediency to overlook it and be satisfied with its lower levels? The dictate of reason is that under the pretext of not having access to the ideal and desirable level of government, we should not totally dispense with the need for government. Neither should we regard all governments to be equal in spite of their different levels of goodness and badness and approve of them in the same way. Instead, we should seek to establish a government which will be nearest to that of the Infallibles (*ʿa*) and expediency nearest to the ideal one.

For explaining the fourth and last premise of this argument, we see that the things which contribute to the achievement of the highest level of expediency of government in the government of an infallible one are not all the characteristics he enjoys including his behavioral, moral, intellectual, physical and outward, emotional and psychological, domestic, and other peculiarities, and the things that have major contribution in this regard are, firstly, his full and all-dimensional knowledge of Islam and Islamic laws according to which he can direct the society toward the straight path of

Islam and Islamic values; secondly, his absolute immunity from any kind of corruption, error, sin, selfishness, etc.; and finally, his comprehensive and perfect insight and competence in social conditions and management of social affairs. Therefore, when we say in the third premise that we have to strive for achieving the nearest type of government to that of the Infallibles (*'a*), we refer to the government which is headed by a person who, in terms of all the three characteristics, is the best and most brilliant in the society. Since full acquaintance with the Islamic laws is among these characteristics, it follows that this person has to be a *faqīh* because a *faqīh* is capable of defining Islamic laws through research. Of course, only to be a *faqīh* is not enough because having the other two characteristics, viz. God-wariness [*taqwā*] and expertise in managing the affairs of society, are also necessary.

As such, according to these premises, the soundness of each of which we have examined separately, the logical and definite conclusion will be that when we have no access to an Infallible or the government led by an Infallible one, we have to turn to a fully qualified jurist [*faqīh jāmi' al-sharā'i*] who has the right to rule, and when such a person is found in the society, the rule of others will not be legitimate or permissible.

The second intellectual proof

This proof consists of the following premises:

1. Guardianship over people's properties, honor and lives is among the things which concern Divine Lordship [*rubūbiyyat-e ilāhī*], and it is only with the designation and permission of God, the Exalted, that guardianship can be legitimate.

2. This legal authority and right of custody of the honor and lives of people has been given by God, the Exalted, to the Holy Prophet ( ) and the infallible Imāms (*'a*).

3. During the time when the people are deprived of the presence of an infallible [*ma' ūm*] leader among them, either God, the Exalted, has given no attention to the implementation of the social laws of Islam, or He has given the permission to the most appropriate person to implement them.

4. The assumption that during the time of the society's lack of access to an infallible leader God has given no attention to the implementation of social laws of Islam is contrary to the divine purpose, inconsistent with wisdom and that which is not worthy of being preferred. According to the second assumption, we can realize through the definite dictate of reason that permission has been given to the most appropriate person to implement the social laws.

5. A fully qualified jurist, viz. the *faqīh* who possesses the two qualities of God-wariness [*taqwā*] and expertise in governing society and ensuring its welfare has a greater authority than any other person.

Hence, a fully qualified jurist is the best and most appropriate person who has gained the permission of God, the Exalted, and infallible saints [*awliyā'*] (*'a*) to implement the social laws of Islam when the people are deprived of an infallible leader. Below is a detailed explanation of this proof and its premises.

The first premise is the one which we have mentioned many times. In discussing the presuppositions of the theory of *wilāyat al-faqīh* and the role of the people in Islamic government and the basis of legitimacy, we have relatively elaborated on it. The conclusion we reached was that since God is the Creator and Master of the entire creation including human beings, and since according to the general dictate of reason, to exercise authority over the property of others without their permission is an unjust and unacceptable act, it follows that God has the right to exercise authority over man and his property, and in lower level, this right may be given by God to some human beings.

In the second premise which is concerned with the role of the people in Islamic government and we said that according to all Muslims' belief, the right to exercise authority over the properties, honor and lives of the people have been entrusted to the Holy Prophet ( ) by God. In the same token, the Shī'ah believe that after the Prophet ( ), this right has also been granted to the twelve infallible Imāms.

The third and fourth premises, in reality, answer this question: "In a time like ours when the people have no access to the Prophet ( ) or to one of the infallible Imāms (*'a*), what decision should be taken?" Has God, the Exalted, besides the many social laws in Islam whose implementation requires having an administrative system and political power, taken no care to these laws, and given attention only to the personal laws of Islam and their implementation, or has He emphasized the implementation of the social laws of Islam as well? In other words, according to the dictate of reason, during the absence of an infallible [*ma' ūm*] in the society, only two things are possible: Either the purpose of God is to implement the social laws of Islam or not to implement them. Now, we shall examine what is for and what is against each of these propositions.

If we say that during the absence of the Infallibles (*'a*), God does not want to take care of implementing the social laws of Islam and suffices Himself with the personal obligations such as prayer, fasting, *ajj* pilgrimage, and ritual purification and impurity, this will be contrary to the wisdom of God

and preferring that which is not worthy to be preferred. Let us elaborate on this point.

In principle, we believe that the reason behind founding the system of "prophethood" [*nubuwwah*] and sending down prophets (*'a*) and heavenly scriptures is that God, the Exalted, has not created this world and human beings without a purpose. In fact, His purpose is to bring every creature to perfection commensurate with its existential potentiality and man is no exception; he has been created to attain perfection. Yet, since man is unable to define his ultimate perfection and its exact limits and path by relying solely on reasoning, God, the Exalted, has guided man and shown him the way to perfection by sending down prophets (*'a*) and making known to him the laws and commands through religion, and all these religious commands and laws have certain effects on the man's perfection. As a matter of fact, religion has been presented to man to enable him to attain perfection. Given this analysis, if we assume that God, the Exalted, has suspended and disregarded an immense part of the laws of Islam, this will mean that God has abandoned His purpose, and that is man's attainment of perfection because what ensures man's achievement of felicity and perfection commensurate with his existential potentiality is the set of religious laws and commandments, and ignoring some of them is strongly refused by the Qur'an:

﴿ أَفَتُؤْمِنُونَ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ فَمَا جَزَاء مَن يَفْعَلُ ذَلِكَ مِنكُمْ إِلاَّ خِزْيٌ فِي الْحَيَاةِ الدُّنْيَا وَيَوْمَ الْقِيَامَةِ يُرَدُّونَ إِلَى أَشَدِّ الْعَذَابِ ﴾

"*What! Do you believe in part of the Book and defy another part? So what is the requital of those of you who do that except disgrace in the life of this world? And on the Day of Resurrection, they shall be consigned to a severer punishment.*"[1]

In principle, if the social laws of Islam had had no impact whatsoever upon man's felicity and perfection, they would not have initially been promulgated. So, the effect of this set of laws on the felicity and perfection of man is certain, and naturally to ignore them will obstruct man's attainment of bliss and perfection, and it will be contrary to wisdom and God is too wise to ignore them.

In the same vein, as we have shown in the explanation of one of the premises of the first rational proof, according to the dictate of reason, if it is impossible to obtain necessary expediency in its ideal and most desirable form, it is necessary and obligatory to obtain what is nearest to its ideal and

1 *Sūrah al-Baqarah* 2:85.

most desirable form, and one should, under the pretext of impossibility of obtaining the good thing in its best, neither totally overlook it nor suffice himself with its lower degree when it is possible for him to attain a higher level. Now, in view of this rule, we say that the prerequisite for the implementation of the social laws of Islam is the establishment of government whose perfect model is the government of the Infallibles (*ʿa*). However, in case of lack of access to the Infallibles (*ʿa*) and when they are not present among the people, there are three possibilities: (1) By giving the permission to implement these laws to the most appropriate person, we can obtain the highest degree of expediency after the government of the Infallibles (*ʿa*) as a result of implementing these laws; (2) Notwithstanding the possibility of obtaining a higher level of expediency, we consider all the levels of expediency to be identical and to obtain a higher level as not necessary; (3) In spite of the possibility of obtaining some levels of expediency through the implementation of social laws of Islam, we totally disregard this expediency and suspend the implementation of the social laws of Islam. It is obvious that the first possibility is the most preferable while the other two are being preferred over, and preferring what is being preferred over to what is preferable is unsound and never becomes a wise person.

Given this argument, the third and fourth premises have been proved convincing and so far it has become evident that the dictate of reason entails that during the lack of access to the Infallibles (*ʿa*), the permission to implement the social laws of Islam has been given to the most appropriate person, and if it was not so, there would be violation of the purpose, refutation of wisdom, and preferring what is being preferred over to what is preferable on the part of God, the Exalted.

Now, after proving that during the absence of the Infallibles (*ʿa*) the permission to implement the laws of Islam has been granted to the most appropriate person, this question will arise: "Who is the most appropriate person and what makes this person most qualified, competent and worthy to assume the post?" We clearly stated the answer to this question while explaining the fourth premise of the first rational proof and we said that among the qualities and attributes of the Infallibles (*ʿa*) that cause their government to be most perfect are these things: infallibility [*ʿi mah*], knowledge and complete awareness of the laws and injunctions of Islam, and good acquaintance with social issues and the dexterity in managing them. Thus, anyone who possesses all these three attributes and most similarity and nearness to the infallible Imām (*ʿa*) is the best and most appropriate of the rest. And such a thing applies to no one but the *faqīh* who

has a good knowledge of Islam, is pious and has the expertise required for managing the affairs of the people and society.

To sum up, a fully qualified jurist is the best and most appropriate person who has been given permission by God and the infallible saints [*awliyā'*] (*'a*) to implement the social laws of Islam at the time when people are deprived of the presence of an infallible leader.

Transmitted proofs

We have said that for proving the theory of *wilāyat al-faqīh*, both intellectual [*'aqlī*] and transmitted [*naqlī*] proofs can be cited. The transmited proofs of this issue are the *adīth*s which prove the people's turning to *fuqahā'* to help them solve their administrative problems (particularly judicial issues and legal disputes) or which introduce *fuqahā'* as functionaries [*umanā'*], caliphs [*khulafā'*], inheritors [*waratha'*] of the prophets (*'a*), and those who manage the affairs. Regarding the chain of transmission [*sanad*] and authenticity of these *adīth*s, extensive discussions have been made and since it is not possible to mention them here, it is better to refer to certain voluminous books and treatises which focus on this subject. Among these *adīth*s are the *maqbūlah*[1] of 'Umar ibn an alah, the *mashhūrah* of Abū Khadījah[2] and the *tawqī' al-sharīf* [noble signature] which was a reply to a question asked by Is āq ibn Ya'qūb, and in our opinion, casting doubt upon the chain of transmission of the mentioned *adīth*s is unjustifiable because their transmitters and contents are well-known. As for their proof that substantiates the designation of *fuqahā'* as the agents of Imāms (*'a*), it is indisputable and if there is no more need for such designation during the period of occultation, it will not be less either. Therefore, by applying the criterion of designation of *faqīh* during the time of presence to the period of occultation and establishing the idea that the designation of *faqīh* during the period of occultation through what is technically termed *dalālat al-mawfaqah*, the probability of delegating to the people the designation of *walī al-faqīh* during the period of occultation, though there is no proof to support it, is inconsistent with the Legislative

1 *Maqbūlah*: a *adīth* to which one may make acceptable reference. [Trans.]

2 Abū Khadījah, one of the trusted companions of Imām al- ādiq (*'a*), relates: "I was commanded by the Imām (*'a*) to convey the following message to our friends (i.e., the Shī'ah): 'When enmity and dispute arise among you, or you disagree concerning the receipt or payment of a sum of money, be sure not to refer the matter to one of these malefactors for judgment. Designate as judge and arbiter someone from among you who is acquainted with our injunctions concerning what is permitted and what is prohibited, for I appoint such a man as judge over you. Do not submit the complaint you have against one another to the tyrannical ruling power.' " *Wasā'il al-Shī'ah*, vol. 18, p. 100. [Trans.]

Lordship of God (as indicated in the verse, *"Verily, the authority belongs to Allah"* and according to other transmitted proofs). Besides, no Shī'ah *faqīh* (except in recent times) has ever put forward such a probability [*i timāl*].

At any rate, the aforementioned *adīth*s strongly corroborate the rational proofs we have mentioned, and even assuming that somebody disputes about their chain of transmission or proofs, our citation of rational proofs will remain valid.

After this preliminary explanation, let us review some of the transmitted proofs that support *wilāyat al-faqīh*:

1. The *adīth* which is well-known among the *fuqahā'* as the *tawqī' al-sharīf* [noble signed decree]. This *adīth* has been mentioned by the great and outstanding Shī'ah scholar ['*ālim*], the late Shaykh al- adūq[1] in his book, *Ikmāl al-Dīn*.[2] This signed decree is actually a reply to the letter of Is āq ibn Ya'qūb written by *a rat Walī al-'A r*, the Imām of the Age ('*a*). In the said letter Is āq ibn Ya'qūb posed questions to the Imām ('*a*) one of which is: "What do we have to do in case of occurring social problems [*al- awādith al-wāqi'ah*] during the period of occultation?" In reply to this question, the Imām ('*a*) said:

وَأَمَّا ٱلْحَوَادِثُ ٱلْوَاقِعَةِ فَارْجِعُوا فِيهَا إِلىٰ رُوَاةِ حَدِيثُنَا فَإِنَّهُمْ حُجَّتِي عَلَيكُمْ وَأَنَا حُجَّةُ اللهِ عَلَيهِمْ.

"In case of occurring social problems, refer for guidance to those who relate from us, for they are my argument [*ujjah*] against you, and I am Allah's argument against them."[3]

If what is meant by "occurring social problems" [*al- awādith al-wāqi'ah*] and "those who relate from us" [*ruwātu adīthunā*] in this signed decree is known, then its proof for our claim which is establishing *wilāyat al-faqīh* will become clear.

When clarifying the purport of *al- awādith al-wāqi'ah* mentioned in the text carrying the signed decree, we notice that what Is āq ibn Ya'qūb means is by far other than the religious laws and issues presented nowadays in the books of practical treatise [*risālah al-'amaliyyah*] firstly because it is

1 Shaykh a - adūq: also known as Ibn Babūyah, one of the most important of the early Shī'ah scholars who died in 381 AH/991 CE. For having an idea about the biography and works of Shaykh al- adūq, see the introduction to Shaykh al- adūq, *I'tiqādātu'l-Imāmiyyah: A Shī'ite Creed*, 3rd ed., trans. Asaf A. A. Fyzee (Tehran: World Organization for Islamic Services, 1999), pp. 6-23. [Trans.]

2 *Ikmāl al-Dīn*: in full, *Ikmāl al-Dīn wa Itmām al-Ni'mah* is a work by Shaykh al- adūq on the occultation [*ghaybah*] of the Imām of the Age ('*a*). [Trans.]

3 *Ikmāl al-Dīn wa Itmām al-Ni'mah*, vol. 1, p. 483.

clear for the Shī'ah that regarding these issues, they have to refer to religious scholars and to those who are familiar with the traditions and narrations of the Prophet ( ) and Imāms (*'a*), and thus, they do not need to ask about them. The same is true of the time of presence of the Imāms (*'a*) themselves when, due to the emergence of problems like geographical distance and the like, the Imāms (*'a*) used to tell the people who had religious questions to refer to such people like Yūnus ibn 'Abd al-Ra mān, Zakariyyā ibn Ādam and the like. The four special deputies [*nawwāb al-arba'ah*] of the Imām of the Age (*'a*) during the period of his minor occultation [*'a r al-ghaybah al- ughrā'*] (each of whom was a *faqīh* and religious scholar) is another example. In sum, this is not something new for the Shī'ah. Secondly, if by *al- awādith al-wāqi'ah* Is āq ibn Ya'qūb meant religious laws, he would say something like: "What is our duty regarding the lawful [*alāl*] and the unlawful [*arām*]?" or "What is our duty regarding Divine laws?" and similar expressions, which are very common in most narrations. Anyhow, the expression, *al- awādith al-wāqi'ah*, is never used to refer to religious laws. Thirdly, the connotation of words is essentially connected with the situation, and in terms of lexicography and situation, *al- awādith al-wāqi'ah* never means religious laws. Rather, it has a very wide meaning which includes social issues, problems and happenings. As such, the question of Is āq ibn Ya'qūb to *a rat Walī al-'A r* (*'a*) actually means: "Regarding the social issues and concerns which the Muslim community faces during the period of your occultation, what our duty will be and to whom we shall turn for guidance?" In reply to it, the Imām (*'a*) wrote: "In this case, you have to refer to "those who relate from us"." Now, let us see what is meant by "those who relate from us".

One may possibly argue that what is meant by "those who relate from us" is anyone who cites *adīth*s or narrations from such books like *Uṣūl al-Kāfī*,[1] *Wasā'il al-Shī'ah*[2] or any other *adīth* book and narrates them to the

1 *Uṣūl al-Kāfī* is the first of the three sections of *Al-Kāfī*, one of the most important Shī'ah collections of *ḥadīth* compiled by Shaykh Abū Ja'far Muḥammad ibn Ya'qūb ibn Is āq al-Kulaynī (d. 941 CE). It covers ideological and ethical matters and consists of the books of Reason and Ignorance; the Excellence of Knowledge; Divine Unity; Divine Proof; Belief; Unbelief; the Qur'an; and Supplications. [Trans.]

2 The book *Wasā'il al-Shī'ah* compiled by Shaykh Muḥammad ibn asan al- urr al-'Āmilī (d. 1693 CE) is one of the best collections of traditions [*ḥadīth*s] ever compiled in recent centuries. It includes traditions from the Prophet of Islam and the Imāms which are quoted in the Four Books [*kutub al-arba'ah*] and in many other *ḥadīth* collections. It comprises more than fifty-one sections ranging from *Kitāb al-Ṭahārah* to *Kitāb al-Diyyāt* and provides a comprehensive review of issues on Islamic jurisprudence, laws, ethics and the practices of the Ja'farī school of thought. [Trans.]

people. But if we make a closer examination, we will find that this notion is not correct because in this time of ours anyone who wants to narrate a *adīth* or narration from the Prophet ( ), Imām al- ādiq (*ʿa*) or any other Imām has to be sure, in one way or another, that the *adīth* is really ascribed to the Prophet, or Imām al- ādiq or any other Imām; otherwise, one has no right to say that Imām al- ādiq (*ʿa*) has said so-and-so. If one does not have solid evidence that the said *adīth* and narration is ascribed to Imām al- ādiq (*ʿa*) or to one of the Imāms and Infallibles (*ʿa*), and says that it is ascribed to them, this act will be considered lying. Besides, ascribing to the Prophet ( ) and the Imāms (*ʿa*) what they have not said is considered a major sin. To be more precise, if someone intends to narrate a *adīth* from the Prophet ( ) or an Imām, he has to be able to rely on the Infallibles (*ʿa*) according to a certain credible religious proof or evidence. It is quite obvious that the proper way of narrating *adīth* requires expertise, which is not in the fields of medicine, engineering, computer science, and other sciences. It has to be in Islamic jurisprudence [*fiqh*] and no one has such an expertise except the *faqīh*. Thus, what is meant by "those who relate from us" is in reality the *fuqahāʾ* and religious scholars [*ʿulamāʾ*].

In view of our explanation of the two phrases, "*al- awādith al-wāqiʿah*" and "*ruwātu adīthunā*", it is clear that the meaning of the signed decree of the Imām of the Age (*ʿa*) is: "Regarding the social problems and events that the Muslim community faces during the period of my occultation, turn for guidance to the *fuqahāʾ* and religious scholars because they are my argument against you and I am Allah's argument against them." Such a statement is a solid evidence for *wilāyat al-faqīh* during the period of occultation.

2. The other *adīth* that may be cited for proving *wilāyat al-faqīh* is a *adīth* known as the *maqbūlah* of ʿUmar ibn anzalah. In this *adīth*, stating the duty of the people concerning solving disputes and turning for guidance to a competent authority who rules over the Muslims, Imām al- ādiq (*ʿa*) says:

مَنْ كَانَ مِنْكُمْ قَدْ رَوىٰ حَدِيثُنَا وَنَظَرَ فِي حَلاَلِنَا وَحَرَامِنَا وَعَرَفَ أَحْكَامَنَا فَلْيَرْضُوا بِهِ حَكَمًا فَإِنِّي قَدْجَعَلْتُهُ عَلَيْكُمْ حَاكِمًا فَإِذَا حَكَمَ بِحُكْمِنَا فَلَمْ يَقْبَلْهُ مِنْهُ فَإِنَّمَا إِسْتَخَفَّ بِحُكْمِ اللهِ وَعَلَيْنَا رَدَّ وَالرَّادُّ عَلَيْنَا كَالرَّادِّ عَلىٰ حَدِّ الشِّرْكِ بِاللهِ.

"If there is a person among you who narrates from us, is versed in the lawful and the unlawful, and is well acquainted with our laws and ordinances, accept him as judge and arbiter, for I have appointed him as a ruler over you. So, if he rules according to our law and you reject his ruling, you will

belittle Allah's law and oppose us, and to oppose us means to oppose Allah, and opposing Him is tantamount to associating partners with Him."[1]

It is obvious that the expression, "who narrates from us, is versed in the lawful and the unlawful, and is well acquainted with our laws and ordinances" applies to anybody except the *faqīh* and *mujtahid* who is well-versed in religious laws and issues, and the Imām (*'a*) definitely means the *fuqahā'* and religious scholars whom he has assigned as rulers over the people and regarded the ruling of the *faqīh* like his ruling. And it is crystal clear that obedience to the decree of the infallible Imām (*'a*) is obligatory and mandatory. As such, to obey the decree of the *faqīh* is obligatory and mandatory, too. As stated by the Imām (*'a*), the rejection of the ruling of the *faqīh* is tantamount to the rejection of the ruling of the infallible Imām (*'a*) and ignoring his command, which is a major and unforgivable sin because it is an open rejection of the legislative sovereignty of God, the Exalted, according to the said *adīth*, it corresponds to polytheism [*shirk*], i.e. associating partners with Him. The Holy Qur'an says: *"Polytheism is indeed a great injustice"*[2] and *"Indeed Allah does not forgive that any partner should be ascribed to Him, but He forgives anything besides that to whomever He wishes."*[3]

Thus, defiance of the rule of *faqīh* and rejection of his command is such a grave injustice and dreadful sin that it is not forgiven by God.

The criticism usually made against this way of understanding the mentioned *adīth* is that this narration of the Imām (*'a*) was only a reply to a question about the legal disputes and conflicts among the Shī'ah and the narrator wanted to say: "What is our duty? Shall we refer to the judicial organization and courts of the usurping 'Abbāsīd government or not?" And so what the Imām said was a reply to these questions. The *maqbūlah* of 'Umar ibn anzalah is, in fact, concerned with the implementation of juridical laws in Islam which forms part of the governmental issues while *wilāyat al-faqīh* is related to the entire affairs of government and implementation of all Islamic laws and the rule of the *faqīh* over the entire affairs of Islamic society. So, even if we accept this narration and do not argue against its chain of transmission, the only thing which it suggests is that the *faqīh* has the authority and right to manage judicial affairs and that is all.

In reply to this criticism, two things can be considered: *firstly*, it is true that the inquiry of the narrator is about a particular case (judicial issue), but it is

1 *Usūl al-Kāfī*, vol. 1, p. 67; *Wasā'il al-Shī'ah*, vol. 18, 98.
2 *Sūrah Luqmān* 31:13.
3 *Sūrah al-Nisā'* 4:48.

quite common in Islamic jurisprudence that the particularity of the question does not always necessitate giving a reply that will be on specific case and cover no other cases. In fact, it is possible that a general reply is given to a question which is concerned with a certain case. For instance, we have many narrations about prayer in which the narrator asks about the case of a man to whom such-and-such happens while praying. Regarding these narrations, no *faqīh* has said or says that the reply given by any infallible Imām (*ʿa*) to such questions is a ruling pertaining only to the case of the man praying and that if the same thing exactly happens to a woman praying no ruling for the case of the mentioned woman can be drawn from the narrations and we have to look for it in other narrations. Concerning this type of narrations, the *fuqahāʾ* see that although the question being posed is about a specific case, i.e. a man praying, the ruling [*ukm*] of the Imām (*ʿa*) in reply to the question is applicable to every person praying, male or female.

Secondly, in the *maqbūlah* of ʿUmar ibn anẓalah, Imām al- ādiq (*ʿa*) has said: "I have appointed such a person (i.e. who narrates from us, is versed in the lawful and the unlawful and is well acquainted with our laws) as a ruler [*ākim*] over you" and not "I have appointed him as a judge [*qā ī*] over you." There is difference between saying "I have appointed him as *ākim* over you" and "I have appointed him as *qā ī* over you". The general meaning of the word *ākim* encompasses all the affairs of governance and rule.

In any case, in view of the intellectual and transmitted proofs, some examples of which have been mentioned, in our view there is no more doubt about the idea that during the period of occultation of the infallible Imām (*ʿa*), it is only the fully qualified jurist [*faqīh jāmiʿ al-sharāʾi*] who has been granted the right and permission by God, the Exalted, and the infallible Imām (*ʿa*) to govern and rule, and to exercise authority. So, any government, at the top of which is someone other than *faqīh* and is managed without the permission and supervision of *faqīh* is a government of the *āghūt* wherever it is and whoever its ruler is, and to support such a government is sinful and unlawful. Also, if the fully qualified *faqīh* was a person of authority and the situation was conducive so that this ruler could establish a government, according to the proofs we have stated, obedience to him is obligatory and opposing his rule is unlawful because the Imām of the Age (*ʿa*) said: "He is my argument against you" and "So, whoever rejects his ruling belittles Allah's ruling and opposes us." Similarly, if the Commander of the Faithful (*ʿa*) appointed someone as the governor of a region, it was incumbent upon the people to obey the appointed person and opposing that governor would be tantamount to opposing the Commander of

the Faithful (*ʿa*). When, for example, the Imām appointed Mālik al-Ashtar[1] as the governor of Egypt, nobody had the right to defy Mālik's orders and say: "I know that ʿAlī (*ʿa*) has designated Mālik and appointed him as a governor, but since, for example, Mālik is not infallible and identical to ʿAlī, I do not need to obey him, even though his orders and the laws enacted by him come within his jurisdiction, and it is not wrong from the perspective of religious law to behave like that." It is obvious that such an argument and statement is invalid and unsound for it is impossible to oppose Mālik al-Ashtar who had been designated by ʿAlī (*ʿa*). The purport of the stated proofs is that in these days the *faqīh* is considered representative and deputy of God and the Imām of the Age (*ʿa*), and as stated by the Imām (*ʿa*) himself, to oppose the *faqīh* is religiously impermissible. **?**

1 Mālik al-Ashtar: more fully, Mālik ibn Ḥārith from Nakhaʿ known as al-Ashtar, was among the prominent commanders of Imām ʿAlī's army and the one whom Imām ʿAlī (*ʿa*) appointed as the governor of Egypt. He accompanied the Imām in the Battles of Jamal and Ṣiffīn. On his way to Egypt, he was killed by Muʿāwiyah through conspiracy. For further details about the account of the Imām's famous instructions to him before his setting forth to Egypt, see *Nahj al-Balāghah*, Letter 53. A complete translation is contained in William C. Chittick, *A Shīʿite Anthology* (Albany, N.Y., 1980), pp. 68-82. [Trans.]

Chapter 5

The Concept of Absolute Guardianship of the Jurist [*Wilāyat al-Faqīh al-Mu laqah*]

The proofs we have presented in the previous chapter substantiating *wilāyat al-faqīh* testify to the idea of absoluteness of *wilāyat al-faqīh* and this entails that the *faqīh* enjoys all the prerogatives which the infallible Imām (*'a*) as the holder of authority of the Islamic society has. According to this perspective, the prerogatives of *walī al-faqīh* are not limited unless there is evidence that some of the prerogatives of the infallible Imām (*'a*) have not been given to the *walī al-faqīh* as in the case of the issue of the initial *jihād*. According to the famous view of the Shī'ah *fuqahā'*, the announcement of the initial *jihād* is among the special prerogatives of the Infallible (*'a*). But apart from these cases (which are very few), there is not any difference between the guardianship of the *faqīh* and that of the Prophet ( ) and the infallible Imāms (*'a*). This idea corresponds with what is called "absolute guardianship of the jurist" [*wilāyat al-faqīh al-mu laqah*]. The founder of the Islamic Republic, a rat Imām Khomeinī used to say: "The guardianship of the *faqīh* is the guardianship of the Messenger of Allah ( ) itself."

"Absolute Guardianship"

One of the doubts which is sometimes raised against the principle of *wilāyat al-faqīh* in general and against the term "absolute" [*mu laq*] in particular is that *wilāyat al-faqīh* and in particular, *wilāyat al-faqīh al-mu laqah* [absolute guardianship of the jurist] corresponds with despotic government

and *wilāyat al-faqīh al-mu laqah* is identical to dictatorship. That is, when *faqīh* assumes power he does whatever he likes, issues whatever decree he wants, and appoints or dismisses whoever he wishes. In sum, he has absolute power and is not held accountable for whatever he does. In other words, it is claimed that there are two types of government: liberalism which is based on the will of the people, and fascism which is founded on someone's whims and caprice. "Consequently, when *wilāyat al-faqīh* system is not liberal, naturally it is a fascist system."

In reply to this allegation, we say that categorizing government into two, i.e. liberal and fascist, is a fallacy. We should remember that there is a third type of government in which the ruler relies neither on the will and choice of the people (liberal government) nor on personal will and choice (fascist government) but he rules according to the will and choice of God, the Exalted, following the divine laws. *Wilāyat al-faqīh* belongs to this third category and it is, therefore, not a fascist government. Given this explanation, it is very clear that the claim that *wilāyat al-faqīh* means that the *faqīh* does whatever he likes and issues whatever decree he wants, has absolute power, and is not accountable for whatever he does is not true. In fact, those who understand and interpret the term "absolute" [*mu laq*] like that are mistaken. Of course, some interpret it this way for special purposes and out of spite. In any case, for refuting this claim, it is expedient here to expound the term "absolute" in "absolute guardianship of the jurist".

The word "absolute" in "absolute guardianship of the jurist" indicates some points which are interrelated. Let us see what these points are:

One of these points is that "absolute guardianship of the jurist" is used in contrast with the limited concept of guardianship which jurists had during the time of the *āghūt*.[1] Let us elaborate on this point. Prior to the victory of the Islamic Revolution and during the reign of the *āghūt*, which was a period of strangulation, owing to the limitations imposed on Shī'ah *fuqahā'*, they could hardly get involved in social affairs, and the people could ask them about certain social issues and if this was possible, it was concealed from the ruling authority. For example, the people used to refer to *fuqāhā'* to ask them about things like marriage, divorce, pious endowment [*waqf*] and some legal disputes and affairs while the *fuqāhā'* on their part used to answer them according to their guardianship. As we have indicated, the *fuqahā*'s exercising of this guardianship both in term of range and case was so limited that they were unable to get involved in those things which, according to Islamic law, were among the rights and prerogatives granted to

1 Time of the *āghūt*: the monarchial period in Iran, in general, and in particular, the Pahlavī dynasty which ended in February 1979 with the triumph of the Islamic Revolution. [Trans.]

them by God, the Exalted, and the infallible Imāms (*ʿa*). With the victory of the Islamic Revolution in Iran and the setting up of the Islamic government by Imām Khomeinī (*r*), the ground for exercising comprehensive authority by the Shīʿah *fuqahāʾ* was paved, and the late Imām had the opportunity and power as the *faqīh* at the highest post in government to exercise authority in all that comes within the jurisdiction of the *walī al-faqīh*. During this time, the *faqīh* has been able to exercise all the prerogatives and rights granted to him by the Promulgator of religious law and Owner of the universe and mankind, and so the numerous limitations and restrictions placed on his way during the period of the *āghūtī* governments have been removed. In consonance with this given explanation, "absolute guardianship of the jurist" is used in contrast to limited guardianship of the jurist during the reign of the *āghūt*, and so it is clear that this idea has nothing to do with dictatorship, despotism and waywardness.

The second point to which "absolute guardianship of the jurist" implies is that when the *faqīh* occupies the highest post of government, he enjoys all the prerogatives and rights which are required for governing, and there is no difference between him and the infallible Imām (*ʿa*) in this particular case. That is, we should not say that the *faqīh* cannot exercise certain rights and prerogatives, in spite of their being necessary for governance, because they belong only to the infallible Imām (*ʿa*) or that only the infallible Imām (*ʿa*) can exercise them when he gains authority and so the *faqīh* cannot claim he has such prerogatives and rights. Obviously, such a claim is unacceptable because when we admit that these rights are necessary for governance, their absence will have bad effects on administering the affairs and the ruler will be able to play his role of managing the society's affairs. Hence, one can logically find no difference between the infallible Imām (*ʿa*) and the *walī al-faqīh* in this respect, and if we set any limitation for the *faqīh*'s prerogatives and rights, the result will be losing the welfare of the Islamic society and disregarding its interests. As such, it is necessary for the *faqīh*, like the infallible Imām (*ʿa*), to possess all the rights and prerogatives. This second point to which the word "absolute" indicates in "absolute guardianship of the jurist" has been clarified, and, like the previous point, it has no relation with the fascist government and does not contribute to totalitarianization. This issue has a logical basis, is very plain and is accepted by the other kinds of governments.

The other point to which "absolute guardianship of the jurist" indicates is connected with this question: Is the scope of authority and prerogatives of *walī al-faqīh* confined to necessary and urgent cases or can the *faqīh* exercise authority when things are not so necessary and urgent and there is

rational and reasonable preference? It is appropriate to cite an example in order to clarify the issue.

The first example: Suppose that the problem of traffic jam in a city became very serious and due to the lack of highways or to the narrowness of roads, the vehicles always got stuck for hours. In a nutshell, the condition of the streets was not responsive to society's need. Trustworthy and competent authorities decided that the problem could be solved by constructing one or many expressways. Or, perhaps the air pollution in the city became so alarming that the authorities and medical experts warned the people and government of its danger and suggested that parks be opened. In such cases, *walī al-faqīh*, without doubt, can use his governmental prerogatives, and give order for the construction of those expressways and parks, for ensuring comfort to society even though the compensating of the owners of the real estates to be turned into expressways and parks was against the owners' will.

The second example: Suppose that for the purpose of adding beauty to the city we wanted to construct a plaza or park in a certain district, but in this case the problem is not that if we did not open the park, there would be traffic jam or air pollution. And opening a plaza or park would necessitate the demolition of houses and shops and infringement upon real estates. Chances were some of the owners objected the demolition of the houses and shops and occupation of their real estates even if they knew that they would get current market prices in compensation for the demolition of their estates. Does the scope of governmental prerogatives of the *faqīh* extend for enough to allow him order for the construction of the plaza and park notwithstanding the unwillingness of the owners?

The absolute guardianship of the *faqīh* means that the scope of prerogatives and guardianship of the *faqīh* is not confined only to what is expedient and emergent. It is rather absolute in the sense that it includes even the cases which are not emergent but have rational and reasonable basis. In constructing the expressway, plaza and park, and getting involved in social affairs, it is not necessary that the cases belong to the first supposition. In fact, even if it belongs to the second supposition, the *walī al-faqīh* is able to exercise his authority and thus, the scope of his guardianship also includes such cases. Now, it is so obvious that this belief has no relation whatsoever with despotism, dictatorship and fascism.

Now, given these explanations, it is clear that *wilāyat al-faqīh* and in particular, *wilāyat al-faqīh al-mu laqah*, does not mean that, without taking into consideration any standard, the *faqīh* acts merely on the basis of his personal whims and caprice, and does whatever he likes, and that it is his

personal whims, carnal desire and the like that govern. Rather, the *walī al-faqīh* is the implementer of the laws of Islam, and in principle, the basis of legitimacy and proof that prove his guardianship is his implementation of the sacred laws of Islam, thereby ensuring welfare for society. It is natural, therefore, that decisions and choices, dismissals and appointments, and all the functions of the *faqīh* is based on the Islamic laws ensuring welfare for society and seeking the good pleasure of God, the Exalted, and it must be so. If the *walī al-faqīh* drifts away from this basis, he will spontaneously lose his credibility, his guardianship will be lost, and his decisions and views will not be obeyed.

On this basis, we can simply say that the guardianship of the *faqīh* is actually the guardianship of law because he is obliged to act within the bounds of the Islamic law and he has no right to circumvent them. This is the way that the Prophet ( ) and the infallible Imāms (*'a*) followed. As such, instead of the term *wilāyat al-faqīh*, we can also use the expression "the rule of law". Of course, it is needless to say that in this context by "law" we mean the Islamic law. Also, we should not forget that we pointed out in chapter 4 that among the qualifications of the *walī al-faqīh* is "justice" and a just person is the one who acts according to the commands and prohibitions of God and not according to the dictate of one's carnal desires and inclinations. Given this explanation, the falsity of the claim that the *walī al-faqīh* does whatever he likes and imposes his inclinations on others has become more vivid. In fact, it must be said that the just *walī al-faqīh* is he who acts and governs on the basis of the laws of religion and according to the will of God. Of course, the enemies of Islam and the *'ulamā'* insert lies about this theory in some of their words and writings. They say, for example, that *wilāyah al-faqīh al-mu laqah* means that the *faqīh* has authority over everything; he can even modify and deny *taw īd* [monotheism] or, take prayer away from religion. There are hundreds of other untenable claims and inconsistent features which the enemies and those who have private motive have attempted to associate with this theory. In fact, no one has said such a thing so far and no one dares say so. The primary task of the *faqīh* is the preservation of Islam; so, would there be Islam without *taw īd*? Would there be Islam without prophethood [*nubuwwah*]? Would there be Islam without the fundamentals of religion such as prayer and fasting? If we take them away from Islam, what will remain of it for the *faqīh* to preserve?

What makes some suggest these skepticisms and fallacies is that sometimes there appear two affairs: one, an important one and a more important one, and in order to ensure the interests of Islam, the *faqīh* may sacrifice what is important for the sake of what is more important. For instance, if

performing the *ajj* pilgrimage has harmful effects on the Islamic society, the *faqīh* has the right to order people not to go to *ajj*. Although some people are able to perform the pilgrimage, he may suspend its performance for a time for the sake of what is more important. Or, for example, prayer time has just begun which is best time for prayer, but everything indicates that the enemies' attack is due and thus, the battlefront must be on red alert. In this case, the *faqīh* has the right to say that the prayer must be delayed and not to be offered very early and decide that to perform it at appointed and best hour is unlawful or that its performance be at its last hour. In such cases, not only the *faqīh* but also the commander designated by him can give such an order whenever necessary. Yet, all these cases are different from supposing that the *faqīh* says that there is no more *ajj* pilgrimage in Islam; there are no more daily obligatory prayers or to say that Islam has no *ajj* pilgrimage and prayer at all. What takes place in these cases is that the *faqīh* identifies what is important and what is more important, and sacrifices what is important for the sake of what is more important. This is not something new. In fact, all the Shī'ah *fuqahā'* say so and we all know it. There is a famous example in this connection which is mentioned in most books of Islamic jurisprudence. If a lad is drowning in the swimming pool in a neighboring house while your neighbor is away, and for saving the life of the child you have to go into your neighbor's backyard without his permission—an act which is regarded in Islamic jurisprudence as encroachment and usurpation [*gha b*] which is *arām*—in such a situation, could you say: "Since I have no permission to go I will not go and even if the lad is about to die I will not hurry to save him"? No reasonable person will ever doubt that in such a situation, one has to hurry to save the life of the child and say to oneself: "Even if my neighbor is there and I was explicitly told that I had no permission to go into his backward, and see that my neighbor does not take any step to save the life of the child, I will pay no attention to his words and immediately run to save the drowning child. In this situation, we have to deal with two issues: one is the encroachment upon the property of others without his permission and approval which is considered unlawful and an act of usurpation and the other is saving the life of a Muslim which is obligatory. In this case, we cannot comply with both of them so we have to measure things and see for ourselves which one is more important, and act upon it and abandon the less important obligation. In Islamic jurisprudence, this act is technically called "preferring what is more important over what is important," which, in reality, has a rational root and it is not related only to the religious law. In the example of *ajj* pilgrimage and prayer, the criterion of the *faqīh*'s issuance of the decree of temporary suspension of *ajj* or the decree of delaying the performance of

prayer is the same, and the *faqīh* does not decide according to his whims and caprice and what he likes or dislikes.

In any case, in view of the explanations given so far, it is now clear what the correct meaning of *wilāyah al-faqīh al-mu laqah* is, this concept in no way connotes despotism, dictatorship or the like and most of what has been propagated against this theory are calumnies and lies.

Wilāyat al-faqīh and the Constitution

One of the issues which are usually brought forth while discussing the concept of "absolute guardianship of the jurist" is the relationship between *wilāyat al-faqīh* and the Constitution which, in reality, is related to the explanation of the idea of "absolute" in "absolute guardianship of the jurist". For this reason, this point ought to have been mentioned in the previous section when we dealt with "absolute guardianship". However, on account of the special emphasis on it by some people and because people sometimes raise doubts about this point or ask a lot of questions about it, we had better discuss it in a separate section. The question posed in this regard is possibly expressed in difference forms, but in essence all of them are about a single thing or question. Below are the most common forms:

- Does *wilāyat al-faqīh* act in line with the Constitution, or go beyond it?
- Is *wilāyat al-faqīh* above the Constitution?
- Does the Constitution preside over *wilāyat al-faqīh*, or does *wilāyat al-faqīh* preside over the Constitution?
- Can the *walī al-faqīh* transgress the duties and prerogatives set for him by the Constitution?
- Is *wilāyat al-faqīh* above the codified Constitution, or is the Constitution above *wilāyat al-faqīh*?
- Are the prerogatives of the *walī al-faqīh* stipulated in the Constitution (particularly in Article 110) literal or allegorical?

As we have said, all these statements are in reality a single question and refer to the relationship between *wilāyat al-faqīh* and the Constitution. The following section seeks to elaborate on them. Of course, we should note that we have tried, just as in the other discussions in this book, to observe the necessary academic coherence and also use a relatively simple language in this discussion so that they may be easily understood by common readers. Using technical terms and approaching the subject b using a complex and highly academic style have been avoided as well.

Firstly, it must be noted that if one thinks that *wilāyat al-faqīh* is governed by no law or order, and that to be above the law means that the *walī al-faqīh* himself is the law and can do whatever he likes and no law can restrain him and that the absoluteness of *wilāyat al-faqīh* means that the *walī al-faqīh* is bound by no limitation, then we have to say that such conception is certainly false and wrong. In the previous discussion, we pointed out that the *walī al-faqīh* is bound and obliged to act within the framework of the Islamic laws and standards. In essence, the purpose of establishing the government of the *faqīh* is the implementation of the Islamic law. If the *faqīh* intentionally acts at anytime contrary to the laws of Islam and the expediency of the Islamic society, he will be spontaneously removed from the post of guardianship and leadership. In Islam we do not have a *walī al-faqīh* who is above the law and whose will is a law.

However, if, just as we previously explained, what is meant by "laws" is a set of instructions form the Constitution, in order to reply to this question, we have to set the initial point of the discussion as the criterion of legitimacy of the law—that is, in principle, why is it necessary for us to observe a law and to act upon it? Are we bound to accept and act upon any law solely because it is a "law"?

From the different discussions that we have had so far in this book, it has become clear, though briefly, that in our view the credibility of law emanates from God and His religion. That is, if a law stems, in one way or another, from God and His religion, it has credibility, otherwise it is not, and it will not be incumbent upon us to obey it. Therefore, if law has been upheld by all the citizens of a country and by all the people in the world but has no religious and divine source, in our view it is not credible, and we think that we are not obliged to observe it and the same is true of the laws of our country. That is, if any law, including the Constitution, bills approved by the Islamic Consultative Assembly (Iranian Parliament or Majlis) and other laws, has not been, in a sense, endorsed by religion and God, we think that it has no credibility at all in our sight, and thus, we do not have to obey it. This ruling was also applied to the Constitution and other laws of the time of the *āghūt*, which, according to us, had no value and credibility at all.

As such, law in itself has no credibility even if all the people have approved it. Of course, those who have approved it have moral obligation to obey it but those who have not approved it have no such moral obligation. Even those who have approved it have moral obligation; they have no religious or legal obligation. Of course, this is a brief explanation of this subject whose detailed explanation is found in the philosophy of law and political philosophy, which is beyond this discussion of ours. At any rate, in view of

the earlier discussions of this book, it is clear now that when we regard the present Constitution of the Islamic Republic as credible, it is not because of its being the constitution of a country or because the overwhelming majority of the people have voted for it. Rather, it is because this constitution has been endorsed and approved by the *walī al-faqīh* and in our opinion the *walī al-faqīh* is someone who has been designated in a sense by the Imām of the Age (*ʿa*) who, in turn, has been designated by God. Just as the Imām (*ʿa*) said in the *maqbūlah* of ʿUmar ibn anẓalah, rejection of the ruling of the *walī al-faqīh* is tantamount to rejection of the ruling of the infallible Imām (*ʿa*), and rejection of the ruling of the infallible Imām (*ʿa*) is tantamount to the rejection of the ruling of God and if it was otherwise and the signature and approval of the *walī al-faqīh* was not there, the Constitution would, in our opinion, have no value and credibility. If the attachment to the Constitution is takn as a manifestation of national alliance, it is because the *walī al-faqīh* has bestowed it legitimacy. It is due to the support of the *walī al-faqīh* that the Constitution has legitimacy and it is not that the Constitution has lent credibility and integrity to the *walī al-faqīh*. We pointed out earlier that the *walī al-faqīh* does not acquire his legitimacy and guardianship through the choice of the people but through the will of God, the Exalted, and decree of the Imām of the Age (*ʿa*). The crux of the issue is that the Sole Real Master of the universe and man is God, the Exalted, and the exercise of any authority must be by direct or indirect permission and consent of the Sacred Essence.

Thus, the *walī al-faqīh*'s exercising of authority and guardianship is ascribed to the permission granted to him by God, the Exalted, and the Imām of the Age (*ʿa*), and not through the prerogative that the Constitution gives him because the Constitution itself acquires its legitimacy and credibility from the *walī al-faqīh*.

Now, from what we have said so far, it is clear that the *walī al-faqīh* is not above the law and decree of God, but he is, as we have stated, above the Constitution and that he presides over the Constitution and not the other way around. It has also become clear that the duties and prerogatives of the *walī al-faqīh* stated in the Constitution are allegorical and not literal, in the sense that only a part of the most important duties and prerogatives of the *walī al-faqīh* which are usually required is enumerated. It can also be said that in reality, they represent the literal duties and prerogatives of the *walī al-faqīh* "for normal and common circumstances" and sometimes the Leader does not need to refer to all of them at usual times. However, when the society is in a state of crisis and emergency, the *walī al-faqīh* can exercise his guardianship and determine things even if these things have not been explicitly stipulated in the Constitution. Of course, according to the

principles of the Constitution itself, the meaning of absoluteness of the *wilāyat al-faqīh* as reflected in the text of the Constitution is that the duties and prerogatives of the *walī al-faqīh* enumerated in the Constitution are allegorical and not literal. Otherwise, the term "absolute" in the text of the Constitution would not be there particularly when we know that the term "absolute" was added to the text of the Constitution by the legislators after reviewing and thereafter amending the Constitution in 1367 (1988) and that it had not been there before the amendment. This fact connotes that the legislators have had particular purport in adding the term "absolute", and that is to show that the prerogatives of the *walī al-faqīh* are not confined to the points mentioned in the Constitution and that the mentioned prerogatives are relevant to common cases whereas in exceptional circumstances and in times of emergency, the *walī al-faqīh* may take necessary measures on the basis of the absolute guardianship he possesses.

Also, in the practices of a rat Imām Khomeinī (*r*) there are examples which indicate that the authority of *wilāyat al-faqīh* is not confined to what is prescribed by the Constitution. For example, the decree of formation of the Expediency Council and its interference in the law-making process were not reflected by the Constitution of the time. According to the Constitution, forming the said council was not among the prerogatives of the Supreme Leader and *walī al-faqīh*, but a rat Imām (*r*) ordered to form it on the basis of his absolute guardianship. Moreover, regarding what is called the "Supreme Council of the Cultural Revolution", its composition and members, and relevant issues were not mentioned in any law, but by virtue of the absolute guardianship of the jurist, Imām Khomeinī (*r*) issued an order to establish it and he appointed its members and defined its composition. Similarly, in no law the formation of a judicial court named "Special Court for the Clergy" had been mentioned, yet it was established according to the order of a rat Imām (*r*). Regarding the Office of the President, it has been stipulated in the Constitution that the Supreme Leader is to confirm [*tanfīdh*] the decision of the people regarding the President. That is, whoever the people vote for is the criterion and the Supreme Leader is just to affix his signature accordingly. Yet, regarding the President selected by the people, Imām Khomeinī (*r*) wrote in the decree pertaining to the President's assumption of office: "I hereby designate [*na b*] him."[1] This act of the Imām was contrary to what has been stipulated in the Constitution because it is not stated in it that the Supreme Leader is to designate the President. Apart from all these things, in his speeches as well as his writings, a rat Imām (*r*) theoretically upheld the absolute guardianship of the *faqīh*, in the sense that within the framework and

1 *a īfeh-ye Nūr*, vol. 15, p. 76.

bounds of the sacred law of Islam and its standards and in accordance with the expediency of the Islamic society, the *faqīh* may decide and carry out any affair required for running the affairs of government whenever he sees it is necessary. We also mentioned earlier that the proofs supporting the idea of *wilāyat al-faqīh* bespeak of its absoluteness. Besides, there is no Qur'anic verse, tradition, proof, or evidence which substantiates that the idea of *wilāyat al-faqīh* is considered only within the framework of the Constitution or enacted laws.

Marja'iyyah and *wilāyat al-faqīh*

One of the questions raised about the theory of *wilāyat al-faqīh* is: What is the status of the other *marāji' al-taqlīd* and *mujtahidīn* other than the *walī al-faqīh* in the political system based on *wilāyat al-faqīh*? In the case of the existence of *walī al-faqīh*, on one hand, and *marāji' al-taqlīd*, on the other, will there happen any contradiction between them? Will the acceptance of the theory of *wilāyat al-faqīh* necessitate the acknowledgment of a single religious authority [*marja'iyyah*] and the negation of other *marāji' al-taqlīd*? If this is not the case and if according to this theory the people can refer to other sources of emulation notwithstanding the existence of the *walī al-faqīh* in the society, what, in case there is difference of opinion between the *walī al-faqīh*, on one hand, and the *marāji' al-taqlīd*, on the other, will happen to the society and will the duty of the *muqallidīn* [followers] of those *marāji' al-taqlīd* be? Can one act according to the religious edicts [*fatāwā*] of *marāji' al-taqlīd* as well as the decrees of the *walī al-faqīh*? There are other questions of this kind which, like the case in our previous discussion, in essence constitute a single question connected to the relationship between *marja'iyyah* and *wilāyat al-faqīh*. By clarifying this relationship, the reply to these questions and other similar questions will be clear.

In elucidating the relationship between *marja'iyyah* and *wilāyat al-faqīh*, it is necessary to see what the nature of *taqlīd*, function of the *'ulamā'* and *marāji' al-taqlīd* and function of the *walī al-faqīh* are so that the difference between the two and the difference between decree [*ukm*] and edict [*fatwā*] may be clarified.

In stating the nature of the issue of *taqlīd* and function of the *'ulamā'* and the *marāji' al-taqlīd*, we notice that the people's referring to *'ulamā'* and emulating them in religious issues is a manifestation of "an inexperienced person's reference to an expert and knowledgeable person" and this is true of other aspects of human life. Let us elaborate. Since it is not possible for everyone to become expert in everything and it is impossible for a person to acquire expertise in all fields, naturally people would according to the

dictate of reason refer to experts and specialists in the matters they need and about which they have no expertise. For example, a person, who wants to build a house and has no acquaintance with construction or engineering, would refer to an architect, an engineer or a builder for making the design of the house and constructing it. For its iron framework, making the doors of the rooms and cabinets, installing electric and telephone wires, and doing the plumbing and laying gas pipes, one has to refer to specialized experts and entrust to them the responsibility of carrying out these works. Or, when one becomes sick, he consults a doctor for the diagnosis of the ailment and prescription of medicine. In all these cases, relevant experts would determine what to do and one would do according to what they decide. For instance, if a physician says, "Take a tablet three times a day; two spoons of syrup every day; one capsule every day; etc." the patient will not argue or say, "Why should I take this tablet? Why should I take this syrup? Why *three* tablets and not only *one* capsule a day?" Instances of this kind are imposed thousands or perhaps tens of thousands of times everyday in our life. All these are connected to a rational and intellectual ruling called "an inexperienced person's reference to an expert or knowledgeable person". This is not something new in human life. Human societies have known it for thousands of years. In Islamic society, too, one of the issues that is the special concern of every Muslim is the religious issues and commandments. Since a person has no expertise in all injunctions, he or she refers to those who are specialists in religious laws, viz. the *'ulamā'* and *marāji' al-taqlīd* whose views are guidelines for people to follow. So, *ijtihād*, in reality, means expertise and competence in religious issues while *taqlīd* means the reference of those who lack knowledge about the laws of Islam to the one who is expert in the said field. The task of a *mujtahid* or *marja' al-taqlīd* is to show what an expert's opinion is. This is the true nature of *taqlīd*.

Meanwhile, the issue of *wilāyat al-faqīh* is distinct from the issue of *taqlīd* for it belongs to another realm. What is at stake here is governance and administering the affairs of society. *Wilāyat al-faqīh* means reaching a conclusion through rational and/or transmitted proofs that society is in need of a person who assumes power and has the final word regarding social issues, and his views and orders are legally binding. Obviously, it is not appropriate that every person does whatever he or she likes. Instead, there must be a specific decree or law to follow; otherwise, the society will plunge into chaos and turmoil. In social affairs, it is not right that one would, for example, say, "I consider green light as the sign for pedestrians to cross the street" while another person would say, "I regard yellow light as the sign for pedestrians to cross the street." Then, a third person would say, "For me, red light is the sign for pedestrians to cross the street." Instead, a

specific decision must be made and everybody has to observe it. The same is true of all social issues. Therefore, the function of the *walī al-faqīh* and the offices, organizations and institutions in the system based on *wilāyat al-faqīh* has the same function as that of states and governments. Also, it is clear that the function of state and government is not merely to show an expert's opinion but to administer the society's affairs through the enactment of laws and regulations and implementing them. In other words, the nature of a state and government's function, and consequently, that of the *walī al-faqīh* is an obligatory one, without which government will have no meaning at all and this is unlike the case of our asking an expert's opinion from someone. For example, when a patient consults a doctor and the doctor writes a medical prescription for him or her or says that he or she has to undergo a certain medical test, the patient will not be under any compulsion; he may not observe any of the doctor's prescriptions and no one has the right to fine or imprison the patient for not taking the medicines prescribed by the doctor or for not undergoing the said medical test.

Thus, after clarifying the nature of the function of *mujtahid* and that of *walī al-faqīh* and the difference between each of them, we can expound the nature of each religious edict [*fatwā*] and ruling or decree [*ukm*] and the difference between the two. A *mujtahid* and *marja' al-taqlīd*'s duty is issuing *fatwā*. As an expert and knowledgeable person in religious matters, the *marja' al-taqlīd* explains to us, for example, how we should pray or how we should fast. Therefore, *fatwā* is the view shown by *marja' al-taqlīd* about general issues and Islamic precepts. In other words, the task of the *marja' al-taqlīd*, like any other expert, is to guide and enlighten others, and he has no apparatus to oblige individuals to obey. He only states Islamic precepts if you so request, but whether to abide by them or not is up to the individual persons and it is not the concern of the *marja' al-taqlīd*. What we ask the *marja' al-taqlīd* about is something like: "What is your opinion regarding this case?" But in the case of the *walī al-faqīh* things are different. What we ask the *walī al-faqīh* about is something like: "What do you give order?" That is, the task of *walī al-faqīh* is not to issue a religious edict but to give a *ukm* [decree]. *ukm* refers to the order released by the *walī al-faqīh* as the religious ruler [*ākim al-shar'ī*] on social issues and particular cases.

In other words, the *fatāwā* [religious edicts] of the *marja' al-taqlīd* are usually issued under general headings, and the duty of identifying their applications lies on the shoulder of the people themselves. If, for example, there is in the external world, a liquid called "drink"—a general label which in actuality has numerous implications. *Marja' al-taqlīd* issues a religious edict stating this general label, i.e. wine is *arām* to drink. Now, let us

assume that there is a red liquid in the glass and we do not know if it is wine or fruit juice. In this case, to determine what it is in the external world is beyond the responsibility of *marja' al-taqlīd*. Even if he says, for example, that it is fruit juice, his statement will have no effect on his *muqallid* [follower] and will not be obligatory for the latter. This is just like the common expression in jurisprudence which states, "The opinion of the *faqīh* in determining the point does not have authority." In principle, it is not the duty of the *faqīh* to say: "This is wine or this is fruit juice." Instead, as stated earlier, he only gives a general ruling regarding the two and says: "Drinking wine is *arām* while drinking fruit juice is *alāl*." Every *muqallid* has to determine for himself or herself in such cases—whether the liquid he or she sees is wine or fruit juice. Or, for instance, the *faqīh* may issue such a religious edict: "If the enemies attack the Islamic territory and the men in the battlefield are able to counter the aggression, the presence of the women is not necessary, but if the presence of men alone does not meet the need, then it is incumbent upon women to go to the battlefield to defend the Islamic territory." The function of *marja' al-taqlīd* goes as far as this point and that is, giving such a general ruling or decree. But as to whether or not in a certain war or in a certain condition, the presence of men in the battlefield meets the need is determined by the people or followers [*muqallidīn*] themselves. The *walī al-faqīh*, however, transcends this point and he himself does such a thing and according to it he gives decisions and issues orders. No one can say: "The function of *walī al-faqīh* is only to state decrees or rulings [*a kām*] while to determine the actual fact is the duty of the people themselves and his discernment of the point has no authority to me." As a matter of fact, everybody is obliged to act in accordance with his discernment of the point. For instance, if the *walī al-faqīh* gives a ruling that at a certain time the presence of the women in the battlefront is necessary; in such a case, the presence of the women in the battlefront will become religiously obligatory. This is the same as what is sometimes called "governmental decrees" [*a kām-e ukūmatī*] or "guardianship decrees" [*a kām-e wilāyatī*], which also indicates the difference between *fatwā* and *ukm*. It is necessary at this juncture to note that it is very common that both the *fatwā* and opinion of a *mujtahid* about a certain issue are called *ukm*, and we say, for example, "This is the *ukm* of prayer" or "This is the *ukm* of *ijāb* [Islamic dress code]. Yet, we should know that the word "*ukm*" in such cases is another thing with different connotation, and it must not be mistaken with the term "*ukm*" which we use in relation to the *walī al-faqīh*.

From what we have said so far, it has become clear that since the reference to the *mujtahid* and *marja' al-taqlīd* corresponds to the reference to experts

and specialists and that in consulting the expert, individuals are free to refer to any expert which they deem the best and most qualified, and so regarding the issue of *taqlīd* and *fatwā* everyone can do research and emulate any *mujtahid* whom one deems most knowledgeable and most qualified. There is nothing wrong in the existence of numerous *marāji‘ al-taqlīd* in the society and so every group of people may act according to the opinion of anyone of them. As for the social issues pertaining to government, such a thing is not possible. For example, in the case of driving and traffic rules, it is not possible that every group acts according to its own opinion. It is known to every rational person that if, concerning social issues, there are numerous decision-making authorities and everyone is free to refer to any decision-making authority he likes, the social order will plunge in chaos. As such, with regard to the social issues and affairs related to administering society, there must be only one decision-making authority, and according to the theory of *wilāyat al-faqīh*, this single authority is the ruling *walī al-faqīh* and to obey him is incumbent upon everybody including the other *fuqahā’*. As *marāji‘ al-taqlīd* and *fuqahā’* themselves have declared and written in their juristic discussions, if a religious authority [*ākim al-shar‘*] gives a ruling, no other *faqīh* has the right to contradict it. One of the famous examples which we mentioned earlier is the tobacco controversy and the *ukm* of the late Mīrzā-ye Shīrāzī. When he declared, “Today, the use of tobacco is unlawful [*arām*] and tantamount to war against the Imām of the Age (*‘a*),” everybody including the other *‘ulamā’*, *marāji‘ al-taqlīd* and *fuqahā’* regarded themselves bound to observe it because this act of the later Mīrzā-ye Shīrāzī was not *fatwā*-giving or expression of a juristic opinion but an issuance of a “guardianship decree” [*ukm-e wilāyatī*].

In sum, what we have said so far regarding the nature of the function of *marja‘ al-taqlīd* and that of the *walī al-faqīh*, and the difference between the two is that one of the differences between the *marja‘ al-taqlīd* and the *walī al-faqīh* is that the former gives general laws (about both individual and social issues) and it is not his concern to determine the application of these laws. The function of *walī al-faqīh*, however, is to issue orders and make decision suitable to specific social needs and conditions. In another perspective, the difference between *marja‘ al-taqlīd* and *walī al-faqīh* is that *marja‘ al-taqlīd* is an authority from whom an expert’s opinion is asked, and in principle, reference to *mujtahid* and *marja‘ al-taqlīd* is the same as reference of an inexperienced to an expert while, the *walī al-faqīh* is asked this question, “What is your decision and order?” In other words, the function of the former is to issue *fatwā* while that of the latter is to give orders and make decisions. The other point is that there have been so many *fuqahā’* and *marāji‘ al-taqlīd* and the emulation [*taqlīd*] of any of them by

people is permissible. This situation has been among the Muslims for hundreds of years and there has been no problem. However, the *faqīh* who acts as the ruler [*ākim*] and guardian of the affair [*walī al-amr*] must be no more than one person and multiplicity of them leads to social chaos and absence of the social order.

Now, concerning the issue of a person's possession of both *marja'iyyah* (being a *marja' al-taqlīd*) and *wilāyat al-amr* (being the *walī al-faqīh*), in essence, it is not necessary for the *faqīh* who is to govern and assume the *wilāyah* to be *marja' al-taqlīd* of all people or at least the majority of the people. In fact, in principle, it is not even necessary for him to be *marja' al-taqlīd* and have emulators [*muqallidīn*]. It is necessary that the *walī al-faqīh* enjoys the chaacteristic of being a *faqīh* and expert in identifying Islamic injunctions and in exercising *ijtihād* about them. Of course, in practice it is possible that prior to his being recognized as *walī al-faqīh*, he may be *marja' al-taqlīd* and has *muqallidīn*, or he may be a *marja' al-taqlīd* who is followed by the majority of the people. Such was the case of the founder of the Islamic Republic of Iran, a rat Imām Khomeinī (*r*). But it is also possible that, as in the time of the late Āyatullāh Gulpāygānī[1] or Āyatullāh Arākī,[2] the possession of *marja'iyyah* and *wilāyah* is not obtained by one person, and so the majority of the people follow a certain person concerning individual issues and general Islamic injunctions and refer to another person (the *walī al-faqīh*) concerning decisions, social issues and determining the ruling of particular cases.

'Guardianship of the Jurist' [*wilāyat al-faqīh*] or 'Guardianship of the Most Qualified Jurist' [*wilāyat al-afqah*]?

Another issue which may come into one's mind and about which questions may be posed is the question of the guardianship of the jurist [*faqīh*] or the most qualified jurist [*afqah*]. Of course, a brief answer was given to it in the previous section because due to its importance, it is necessary to discuss it at length so that no doubt and question may remain about it. To begin the

1 Āyatullāh al-'U mā Sayyid Mu ammad Ri ā Gulpāygānī (1899-1993): a contemporary of Imām Khomeinī, *marja' al-taqlīd* for 32 years and teacher at the Theological Seminary [*awzah al-'ilmiyyah*] in Qum for about 72 years. Here, "the time of the late Āyatullāh Gulpāygānī" specifically refers to the short period beginning with the assumption of Āyatullāh Sayyid 'Alī Khāmene'ī to the office of *wilāyah al-faqīh* in early June 1989 up to the demise of Āyatullāh Gulpāygānī on December 9, 1993. [Trans.]

2 Āyatullāh al-'U mā Shaykh Mu ammad 'Alī Arākī (d. 1994): a contemporary of Imām Khomeinī and a *marja' al-taqlīd* for many decades. Here, "the time of the late… Āyatullāh Arākī" specifically refers to the short period beginning with the assumption of Āyatullāh Sayyid 'Alī Khāmene'ī to the office of *wilāyah al-faqīh* in early June 1989 up to the demise of Āyatullāh Arākī on November 29, 1994. [Trans.]

discussion, it is appropriate to elucidate the question itself first; thereafter attempt to answer it. In every science and field of specialization, we usually notice that all the experts and authorities in a certain field and specialization are not of the same level because there are some who are ahead and more knowledgeable and skilled. For example, among the doctors who are specialized in heart diseases in a city or a country usually there are some who are more qualified than the rest and all of them are equal in terms of their knowledge about the heart, its diseases and the methods of treating them. Each of them possesses a medical license and valid medical degree diploma duly accredited by the Ministry of Health and Medical Treatment and all of them have permission to practice medicine. This does not mean, however, that they are all of the same level of knowledge, experience and talent. The same is true of the *fuqahā'* and *mujtahidīn*. That is, all of them are capable of exercising *ijtihād* and deducing religious laws from the primary sources. Yet, this does not mean that the level of the aptitude and ability of all of them is the same. Rather, in usual cases, some are more meritorious and superior. In Islamic jurisprudence, these are technically called "*a'lam*" [most knowledgeable] and those who are not that competent are called "*ghayr-e a'lam*" [not *a'lam*]. The common opinion of the *fuqahā'* and *mujtahidīn* is that it is obligatory to follow the most knowledgeable [*a'lām*] while it is not permissible to follow or refer to *ghayr-e a'lam*.

Now, in view of the explanation above, the question raised in our discussion is: Should the *walī al-faqīh* be a person who, in terms of the deduction of religious laws and knowledge about Islamic jurisprudence, is most capable and superior and is technically referred to as the most knowledgeable [*a'lam*] and the leading jurist [*afqah*], or does the *walī al-faqīh* not need to have such a condition and all that he needs is to possess the expertise in exercising *ijtihād*?

The reply to this question is that we have to bear in mind that, as we have mentioned in discussing the proofs supporting *wilāyat al-faqīh*, apart from having the knowledge about Islamic jurisprudence, the *walī al-faqīh* must possess two other important qualities, i.e. God-wariness [*taqwā*] and efficiency in managing the society. The last quality (efficiency in managing the society) itself consists of a number of qualities. Thus, for identifying the *walī al-faqīh*, the knowledge about Islamic jurisprudence is not the only criterion but the combination of different criteria is necessary as well, and so, in identifying the *walī al-faqīh* the aggregate of these qualities and conditions have to be taken into account and by giving scores to each of them, the average has to be discerned. If we, for instance, want to appoint a president for a university, we do not consider only one criterion but we need to consider a number of significant criteria. Such criteria such as possession

of a doctoral degree, teaching experience, administrative and managerial experience, and approval of university staff, professors and students may be the most significant criteria for such a selection. If we take these qualities as the condition for holding the post of university president, many persons may be suggested. For example, there is among them one who has the best teaching experience but lacks good administrative experience. Or, there is one who has a good administrative and managerial record but in terms of scientific achievement, he is not the best. Or, there is one who has both impressive administrative and teaching records but because of his inability to establish relations with others, he has not gained the approval of all university staff, professors and students. It is clear that in this case, for selecting the best aspirant we have to find someone who, in addition to possessing the satisfactory ability in each of the conditions, has a higher average than any other one.

The same is true of the *walī al-faqīh*. That is, firstly, he must have an acceptable degree in each of the three characteristics (expertise in Islamic jurisprudence, God-wariness and efficiency in managing the society). Secondly, in terms of his average, he has to be higher than anybody else. Having stated this, if, for example, a certain person is a *faqīh* and also expert in managing the society but impious, or he is a *faqīh* and pious but in terms of management he is unable to properly manage his five-member family, in principle, such a person cannot be among the initial candidates for the office of *wilāyat al-faqīh* even if he is the most knowledgeable [*a'lam*] and leading *faqīh* and *mujtahid*. The reason is that, as we have said earlier, for the assumption of this post, it is necessary to gain an acceptable degree in each of the required conditions. So, in reality, the question about the guardianship of the *faqīh* or the most knowledgeable *faqīh* can be posed and answered under the following three assumptions:

1. The first assumption is to have a person ahead of all the existing *fuqahā'* in exercising *ijtihād* or deducing religious laws from the primary sources but totally lacks one or two of the other qualities (i.e. God-wariness and efficiency in managing the society). From the previous discussion, it became clear that in principle, such a person lacks the basic qualification to assume this post.

2. The second assumption is to have a person who, in addition to possessing all the three conditions, i.e. knowledge in Islamic jurisprudence, God-wariness and efficiency in managing the society, is most competent as far as Islamic jurisprudence is concerned. In view of what we have just stated, it is clear that such a person has the basic qualification to assume the post of *wilāyat al-faqīh*, yet the average he gains in all the qualifications must be

checked first to see whether there is another person who is better and more qualified than him or not.

3. The third assumption is that we have among the existing *fuqahā'* and *mujtahidīn* some who are equal in God-wariness and efficiency in managing the society, but one of them is the most knowledgeable of all in Islamic jurisprudence. On the basis of our previous discussions, such a person ought to assume the office of *wilāyat al-faqīh*.

At this juncture and at the end of this section, it is not out of place to discuss whether or not it is necessary for the *walī al-faqīh* to have competence in the rest of proficiencies. Let us elaborate. In discussing the proofs supporting *wilāyat al-faqīh* as well as in the last discussion, we pointed out to three basic criteria and qualifications for the person who is to assume the post of *wilāyat al-faqīh*, viz. knowledge in Islamic jurisprudence, God-wariness and efficiency in managing the society. The following question may be asked: Why has the possession of such skills as proficiency in military affairs, expertise in economic affairs and the like not been considered among the key pillars of administering the society? Does the lack of the *walī al-faqīh* who serves as the leader of Islamic society of such skills not cause weakness in his management and leadership or disorder in administering social affairs? Is it not necessary to regard as credible the enjoyment of some other skills by the person who has to assume this important post?

The answer is that the indispensability of the *walī al-faqīh*'s enjoyment of the three mentioned conditions lies in the fact that the basic and fundamental raison d'être of *wilāyat al-faqīh* is the implementation of Islamic laws and ordinances. As such, it is natural that the person who is to assume the highest post of the *wilāyat al-faqīh* must first and foremost be knowledgeable, familiar with the laws of Islam and is able to identify them very well (expertise in Islamic jurisprudence). Secondly, the people must trust him and have certainty that he does not act on the basis of personal and factional inclinations and interests, but his main concern is to protect Islam and ensure welfare for the Islamic society, and to refrain from any kind of treachery (God-wariness). Thirdly, in addition to having expertise in Islamic jurisprudence and God-wariness, he should have the power of realizing social issues as well as domestic politics and foreign policy, and be able to manage the society (efficiency in administration). It is natural that if he does not personally possess all these three qualities, irreparable loss will probably befall the society as a result of his leadership. Yet, with respect to the other skills this is not the case. For example, if he himself does not have much acquaintance with military issues, he can simply consult military experts and make appropriate decisions in this field. Or, in economic affairs, he can consult economists and take the necessary economic policies and decisions.

Of course, such a thing is not confined to the *wilāyat al-faqīh* system but it exists in all kinds of governments. At the present, no president, prime minister, or chief executive of a country in the world has expertise in all fields including politics, economy, law, military, and the like, and is capable of directly deciding issues of this kind. In essence, such a thing is impossible and inconceivable for anyone apart from the Infallibles (*ʿa*). It is common everywhere that different advisers and consultants play a pivotal role in decision-making and formulating various policies. In the *wilāyat al-faqīh* system and the Islamic Republic, the Supreme Leader also makes use of consultation and opinions of the experts and concerned authorities and makes decisions. Numerous consultative bodies render assistance to him, one of which being the Expediency Council which functions as the highest advisory body of the Supreme Leader and the *walī al-faqīh*. ?

Chapter 6

The Assembly of Experts and *Wilāyat al-Faqīh*

After introducing strong arguments for *wilāyat al-faqīh* and stating that the *walī al-faqīh* is the best *mujtahid* who, in terms of the qualities required to assume the leadership and hold the reign of government, is the closest one to the infallible Imām (*'a*), it is important to elucidate the theory of *wilāyat al-faqīh* to see how such a person is to be recognized and what approach is used for identifying such a *mujtahid* from among the other *fuqahā'* and *mujtahidīn*. In reality, discussing this issue entails reviewing some secondary subjects, which constitute the main topics of the last chapter of this book, and clarify the relationship between *wilāyat al-faqīh* and the Assembly of Experts.

Why the Assembly of Experts?

Nowadays, what is practically observed in the political structure of the Islamic Republic system which is based on *wilāyat al-faqīh*, is that the *walī al-faqīh* is identified on the basis of the opinion and decision of the Assembly of Experts. At this point, we would like to examine this issue academically and theoretically to see whether or not this method has a sound scientific and theoretical basis.

For identifying the *walī al-faqīh*, hypothetically different assumptions can be taken into account such as people's direct vote, nomination by the previous *walī al-faqīh* and Supreme Leader, selection by the Assembly of Experts, and selection by the Islamic Consultative Assembly (Majlis). Of course, there are other assumptions as well. Perhaps the most important of

them, the acceptance of which is possibly easier and has a relatively logical basis are the following assumptions: (1) selection by people's direct vote and general elections; (2) selection by the Assembly of Experts; and (3) nomination by the preceding *walī al-faqīh* and Supreme Leader. Among the three options, the first two are given special attention in the discussions and discourses. At any rate, in our opinion, clarifying the degree of credibility and value of each of these three views and the topics pertinent to them helps to examine and comment on the other views and there will be no need for us to criticize and analyze the other views. At the outset, it is worth noticing that in discussing the status of the people's vote in the theory of *wilāyat al-faqīh* (Chapter 3), we pointed out that regarding the legitimacy of the *walī al-faqīh*, we advocated the theory of 'discovery' [*kashf*] which we have previously discussed lengthily. In discussing some of the subjects of this chapter, we shall also adhere to this very approach.

Initially, we shall examine the two views on the people's selection through direct vote and the selection by the Assembly of Experts. In the beginning of the discussion, we shall cite an example:

Suppose we wanted to choose the best professor of mathematics in the country and give him a special award. This question will arise: What is the logical and correct way of achieving this goal? For recognizing and selecting the outstanding national professor of mathematics, shall we roam around the city, and ask all the strata of people ranging from the jewelry shopkeeper, street cleaner, carpet vendor, and bus driver to the housewife, farmer, student, and medical specialist, to see what their opinion is concerning who the most outstanding and the best mathematics professor in the country is? It is very obvious that in the first place, this method is unscientific and inappropriate, and the result of this survey, whatever it is, is devoid of any credibility and value. Secondly, in essence, if there are sensible and fair individuals among those who are asked, they will say that the issue is beyond them and they are not worthy to give opinion in that matter. In any case, there is no doubt that in selecting the most outstanding professor of mathematics in the country, no one will apply this method, and if anyone does, the result will be unsatisfactory and rejected.

It is natural that the one who wants to assess the potential and expertise of the professor of mathematics should be well-versed in mathematics and belong to this field. In cases similar to this only relevant authorities and experts can judge. In this case, for instance, initially, in every university, professors of mathematics can select the best professor from among themselves. If there is more than one university in a city, the selected professors of the universities of that city can select the best one from among themselves. Then, at provincial level, the selected professors of the cities

will meet and select the best one from among themselves. For example, thirty professors from thirty provinces will be introduced as the best, and again, they will exchange ideas and finally select the model professor in the country from among themselves. Of course, it is also possible that in this phase or the earlier phases, a committee of judges composed of a number of outstanding professors of mathematics will do the selection, or there will be some slight differences in applying this method. In any case, there is a single general method for all the cases and that is, the expert and authorities on mathematics are to play the pivotal and crucial role in selecting the model professor of mathematics of the country. In selecting the model professor of mathematics of the country, is this method really the reasonable one, or the one in which all the people, illiterate and literate, from university and who are not at university, expert and non-expert, and in sum, every stratum gather together and give their opinion as to who the model professor of mathematics is?

For identifying the *walī al-faqīh*, we have to select the model and superior *faqīh*—the *faqīh* who is most meritorious and best of all the *fuqahā'* as far as the three qualities of knowledge in Islamic jurisprudence, God-wariness and efficiency in managing the society are concerned. The question is: What is the way of choosing such a *faqīh*? Who is worthy to decide on the best and most meritorious *faqīh*? Which is correct and logical to hold public referendum and ask the opinion of the people by conducting a national election or to refer to the concerned authorities; namely, the *fuqahā'*, and ask them to select the most outstanding person from among themselves to assume this office? If, in selecting the model professor of mathematics in the country, referring to the public opinion and holding elections is not considered correct (and it is indeed incorrect) and that the professors of mathematics in the country must give their opinion in this regard, then for selecting the model *faqīh*, the rational and correct way is to entrust the responsibility of selecting the most meritorious *faqīh* to the *fuqahā'*, and so referring to the people and direct vote of the people on this issue cannot be dependable. What is stipulated in the present Constitution of the Islamic Republic of Iran is that selecting the Supreme Leader and the *walī al-faqīh* lies on the shoulder of the Assembly of Experts—experts all of whom are *fuqahā'* and *mujtahidīn* who have dedicated their life to studying Islamic jurisprudence.

These experts who want to finally choose the *walī al-faqīh* can be selected in two ways. One is that in every city where there are a number of *fuqahā'*, one of the most qualified is selected from among them and in the second phase at the provincial level the same is done and in the end, a limited number of them will be selected for the Assembly of Experts. The other way

is that in every province or city, these individuals are identified through public elections. Since the number of the *fuqahā'* and *mujtahidīn* is usually limited and sometimes in a city there is not a single *faqīh* or *mujtahid*, it is sensible that the people, who themselves are not experts in Islamic jurisprudence and *ijtihād* and whose number in every city or province is limited, will do some research and investigation to decide who is or are more meritorious than the rest. Similarly, if we want to find out the best physician of heart diseases in a city or a province, we, who ourselves are not specialized in medicine, can make a right decision by referring to the doctors and specialists as well as by asking the patients who have consulted them.

It has become clear so far that for identifying the Supreme Leader and *walī al-faqīh*, the second of the two ways, i.e. the people's direct choice and selection by the experts is the logical and scientifically defendable one.

Concerning the way of nominating the *walī al-faqīh* by the previous Supreme Leader, it is worth noticing that although in practice this way ensures a relatively high certainty and leads to a proper and desirable nomination because of the previous leader's knowledge and insight with respect to the prominent academic and political figures and individuals of the country and their capabilities, the previous *walī al-faqīh* can, with some reflection and contemplation, identify the most meritorious one from among the most prominent *fuqahā'* and introduce him to the people. However, using this way can pose two serious problems. First, it gives way to the sinister and nefarious propaganda of the enemies to influence the people inside and outside the country by depicting the *wilāyat al-faqīh* system as a despotic regime while accusing the Islamic government of dictatorship. Nowadays, we notice how, in spite of the twenty public elections held over the past twenty years following the Islamic Revolution, the enemies and some thinkers both inside and outside the country spitefully and deceitfully accuse the Islamic Republic system of being a form of dictatorship and despotism.

The other problem is that the previous Supreme Leader can be accused of observing emotional and kinship matters and considering personal and factional interests, a problem which was faced by no less than the Holy Prophet of Islam ( ) when he was accused by some Muslims and non-Muslims who claimed that he ( ) nominated a rat ʿAlī (*ʿa*) as his successor and raised his station because ʿAlī (*ʿa*) was his son-in-law.

Therefore, in spite of the good and positive results that the nomination of the preceding Supreme Leader brings about, we should, for some reasons, discard it.

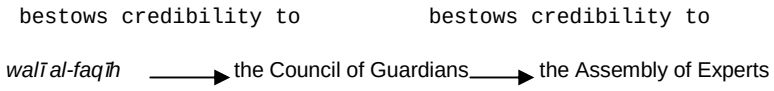
To sum up, the most logical and rational of the three ways—(1) selection of the Supreme Leader and *walī al-faqīh* through direct public suffrage, (2) selection of the Supreme Leader and *walī al-faqīh* through the fully qualified experts, and (3) selection of the Supreme Leader and *walī al-faqīh* through nomination by the preceding Supreme Leader—is the selection of the Supreme Leader through the fully qualified experts. After the reflection and scrutiny on the subject of the assessment of the three ways, the status of the other methods which may be raised in this regard has become clear and so there is no need to deal with them separately.

The problem of circularity

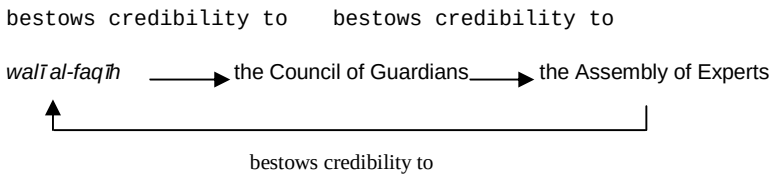
It has become clear so far that the logical and justifiable way of selecting the Supreme Leader and *walī al-faqīh* is referring to the opinion and view of the experts. There are some questions about the Assembly of Experts and its relationship with the *walī al-faqīh* and Supreme Leader, one of which is the problem of circularity[1] allegedly pertaining to the relationship between the Assembly of Experts and the Supreme Leader. It is claimed that on one hand, the Assembly of Experts designates the Supreme Leader and on the other hand, the credibility of this assembly and its function are dependent on the Supreme Leader's approval, and this is nothing but a circular argument which is a false claim. Let us elaborate. The qualification of those who want to be candidates and finally be elected to the Assembly of Experts has to be approved by the Council of Guardians. Therefore, the members of the Assembly of Experts' credibility is determined by the Council of Guardians and if their credibility is not confirmed by the Council of Guardians, the great number of votes in the ballot boxes they garner will not be a criterion for their credibility and membership to the Assembly. Meanwhile, the members of the Council of Guardians have obtained credibility through the approval of the Supreme Leader because, as stipulated in the Constitution, the selection of the jurists to the Council of Guardians is the *walī al-faqīh*'s prerogative. Therefore, the reason why the views of the Council of Guardians are credible and binding is because its members are selected by the Supreme Leader. Given this, we can say that if the credibility of the members of the Assembly of Experts depends on the approval of the Council of Guardians and the credibility of the Council of Guardians, in turn, depends on the approval of the Supreme Leader, it follows that the credibility of the Assembly of Experts depends on the approval of the Supreme Leader through a single intermediary. And it is the Supreme

1 That is, *petitio principi* (begging the question) or the act of using an idea or a statement to prove something which is then used to prove the idea or statement at the beginning; in short, to use the *claim* as the *proof* and vice versa. [Trans.]

Leader and *walī al-faqīh* who lends credibility to the Assembly of Experts and its performance:

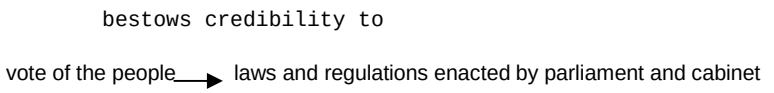


On the other hand, the performance of the Assembly of Experts is to elect and designate the Supreme Leader and *walī al-faqīh*, and it is through the approval and vote of the Assembly of Experts that the Supreme Leadership and *wilāyat al-faqīh* acquires credibility and the right to rule. In this manner, there will be philosophical circularity:



That is, if the Assembly of Experts does not cast its vote, the decree and view of the *walī al-faqīh* will not be valid. On the other hand, if the *walī al-faqīh* does not indirectly approve the Assembly of Experts (through the Council of Guardians), its decision, that is, the designation of the Supreme Leader, will be invalid. This is the same circular relationship which is proved in philosophy and logic to be false and impossible.

Before refuting this allegation of circularity, it is worthy of note that the root of this allegation actually pertains to one of the topics in political philosophy about the democratic systems based on elections where this critical question is raised: What is the basis of the credibility of the laws and regulations enacted by the legislative bodies or the executive body in a democratic system? The initial answer is that its credibility is based on the vote of the people. That is, since the people have voted for these representatives, or to this party or cabinet, it follows that the laws and specific regulations laid down by them acquire credibility:



Here, this question arises: During the establishment of a democratic system and, when the first election is intended to be held, when there are no parliament and cabinet and when a decision is made to establish them through the said election, this election itself necessitates a set of rules and regulations such as whether or not the women have also the right to vote, the minimum age of the voters, the minimum vote of the candidate, whether the rule will be absolute majority, relative majority, 50% plus 1, or one-third of the vote. Also, for the age, level of education and other cases, the required qualifications of the candidate and tens of other issues, there should be certain rules and regulations. It is crystal clear that each of these rules, regulations and decisions about the conduct of election has its effect on the outcome of the election in determining which candidate or party will garner more votes. In the Western countries (or in most of them) which are considered the forerunners of establishing democratic systems in the past two centuries, at the beginning, the women had no right to vote, and did not take part in the elections. Had the women been given the right to vote, most probably the names of today's individuals, parties and figures of the political history of many Western countries would not have existed. Until recently, in Switzerland which has more than twenty autonomous cantons,[1] the women had no right to vote in many of these cantons.[2] By changing the minimum age of eligible voters from 16 to 15 in countries such as ours where the youth constitute almost 80 percent of the population, there is a strong probability that the state of elections and the individuals and groups eligible to vote will totally change. Now, the question is: In the first election held by every democratic system when there is no cabinet or legislative body, what will be the authority which determines the age and gender of the voters or the qualifications of the candidates, the percentage of votes they need to win, and other similar cases related to conducting the election? Here, we have to pay attention to the fact that if we fail to make a convincing and correct decision for the first cabinet and first legislative body, all the cabinets and legislative bodies in all countries will be questionable and their credibility and legitimacy will be groundless. This is because the establishment of the second cabinet and legislature is based on the laws and regulations approved by the first cabinet and parliament. The

1 Switzerland is a confederation of 26 states, called cantons. There are 20 full cantons and six half-cantons; the half-cantons were formed when three full cantons were subdivided. The cantons and half-cantons are subdivided into communes (German *gemeinde*), which are roughly equivalent to counties and number about 3,000. [Trans.]

2 It was only in 1971 that a referendum granted women the right to vote in federal elections and it was only in 1990 that the same right was eventually extended to all the cantons. Besides, it was only in 1981 that an equal rights amendment to the constitution was approved by referendum. [Trans.]

establishment of the third cabinet and legislature is based on the laws and regulations approved by the second cabinet and parliament. The establishment of the fourth cabinet and legislature is based on the laws and regulations approved by the third cabinet and parliament, and so on:

The first cabinet and parliament with its enacted laws

bestow credibility to

The second cabinet and parliament with its enacted laws

bestow credibility to

The third cabinet and parliament with its enacted laws

and so on…

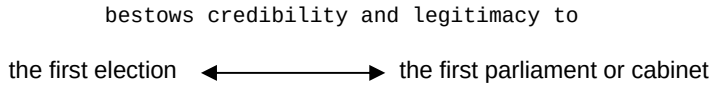
It is natural that if the stated problem in the first cabinet and parliament is not solved and their credibility not established, the credibility of all the succeeding cabinets and parliaments and their enacted laws will be questionable.

In an attempt to solve this problem, some theoreticians and political scientists say: "Finally, we have no option but to hold the first election on the basis of a certain set of rules and regulations." Suppose we held an election on the basis of the following rules and regulations:

1. The minimum age eligible for voting is 16;
2. The women have no right to vote or be voted;
3. The specific level of education of the candidates is of no worth;
4. The minimum votes needed by the candidate to win is one-third of the total votes; and
5. The minimum age eligible for candidacy is 20.

Then, after holding the election on the basis of these rules and regulations and establishing the first cabinet and parliament, this first cabinet and parliament would confirm the validity of the election held according to such rules and regulations. In this manner, this first election would be rendered legal and valid. Obviously, the first cabinet and parliament have to decide how the succeeding elections would be and the same rules and regulations may remain, or some or all of them may be changed. Yet, finally, the problem in the first election and its legal credibility will be solved through the stated way.

It is very obvious that such answer is not correct and the problem will remain unsolved because our question is about the first cabinet and parliament which are to bestow credibility to the succeeding cabinets and parliaments and their enacted laws. This is while the first cabinet and parliament have come into existence as a result of an election based on a certain set of rules and regulations which had not been enacted and approved by any popularly-elected cabinet and parliament. This cabinet and parliament which are to bestow credibility to the election through which it has come into being is nothing but the circular relationship to which we have referred at the beginning:



At any rate, this problem is found in all the systems based on democracy and they have no logical and convincing justification. For this reason, almost all political philosophers and political scientists especially in the current time have acknowledged this problem, but saying, "There is no option and alternative other than this, and in establishing a democratic system based on the will of the people, facing such a problem is inevitable and there is no practical solution to it."

Therefore, the answer that can be given concerning the problem of circularity which is also raised in discussing the relationship of the Assembly of Experts with the Supreme Leader and *walī al-faqīh* will be: Just as this problem exists in all the systems based on democracy and has not induced its proponents to discard democracy and think of other kinds of systems, the existence of such problem in the *wilāyat al-faqīh* system should not persuade us to disregard the essence of this system; otherwise, we have to reject all the past, present and future democratic governments and systems in the world.

The truth of the matter, however, is that the problem of circularity exists only in democratic systems. The system based on *wilāyat al-faqīh* is basically exempt from such a thing, i.e. there is no circularity in it. The reason is that, as lengthily discussed earlier in this book, the *walī al-faqīh* gets his credibility and legitimacy from God, the Exalted, and not from the people. As we pointed out earlier, the law and command of God, the Exalted, have essential credibility [*iʿtibār-e dhātī*] and there is no need to refer to someone or some authority to bestow credibility to the law and command of God. Instead, according to His Real Ownership [*mālikiyyat-e aqīqī*], God, the Exalted, with respect to the entire universe, can exercise any kind of ontological [*takwīnī*] and legislative [*tashrīʿī*] authority He likes over the universe and creatures. That is, in the system based upon *wilāyat al-faqīh*, what happens at the beginning of establishment of the system is as follows:

God, the Exalted → *walī al-faqīh* and his decrees → parliament and cabinet

bestows legitimacy to bestow legitimacy to

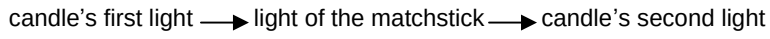
The fallacy in attributing the problem of circularity to the relationship between the *walī al-faqīh* and the Assembly of Experts lies in the assumption that the *walī al-faqīh* acquires his credibility from the Assembly of Experts whereas the credibility of the Assembly of Experts is acquired by the approval of the *walī al-faqīh* through the Council of Guardians whose credibility is also granted by the Supreme Leader. The reply to this fallacy is that the credibility of the *walī al-faqīh* is, as we have said, not granted by the Assembly of Experts but through the decree of God, the Exalted, and designation of the infallible Imām (*ʿa*). In reality, the role of the Assembly of Experts is not to designate the Supreme Leader but, as we have explained in Chapter 3 of this book, to 'discover' [*kashf*] the leader appointed by the Imām of the Age (*ʿa*) through general designation. Similarly, when, in choosing the *marjaʿ al-taqlīd* and determining the most knowledgeable [*aʿlam*] *faqīh*, we refer to and consult experts and well-informed people, and we do not want them to 'designate' a *marjaʿ al-taqlīd* or the most knowledgeable *faqīh*; rather, in reality and actuality the person in question is either *mujtahid* or not, either the most knowledgeable or not. If he is indeed a *mujtahid* or a most knowledgeable *faqīh*, the result of our research will not arbitrarily affect his status. And if he is really not *mujtahid* and *aʿlam*, the outcome of our investigation will not render him *mujtahid* and *aʿlam*. So, the sole purpose of our consulting the experts is to discover, through their testimony, who the most knowledgeable *mujtahid* is (a thing which exists in reality prior to our inquiry). The same is true of the Assembly of Experts

whose duty is not to designate the *walī al-faqīh* to the Supreme Leadership but to merely bear testimony which *mujtahid* has, according to the decree of the Imām of the Age (*'a*), the right to govern and whose command has to be obeyed.

The other reply, i.e. the third reply, is that the founder of the Islamic Republic of Iran, a rat Imām Khomeinī (*'a*), for example, set up the Council of Guardians for the first time and the said Council confirmed the qualification of the candidates who were elected to the Assembly of Experts, but the task of this Assembly of Experts is to choose the *next* Supreme Leader. Therefore, this process does not undergo any circularity. There would have been circularity if Imām Khomeinī (*qs*) had, through an intermediary (Council of Guardians), approved the Assembly of Experts and the Assembly of Experts had designated the Imām to the Supreme Leadership. Similar to this case is when at the beginning we have a lit candle and with this candle we light a matchstick with which we light another candle. This is not considered circularity. There will be circularity if the light of the first candle is taken from the matchstick while the light of the matchstick is taken from the first candle. Naturally, neither the candle nor the matchstick will be lighted.

One may say that originally the leadership of Imām Khomeinī (*qs*) has nothing to do with the Assembly of Experts but the continuation of his leadership depends on the discretion, approval and testimony of the Assembly of Experts. Therefore, there is no circularity with respect to the beginning of his leadership, but as far as the continuation of his leadership is concerned, the problem of circularity exists. This is because the continuation of his leadership is the outcome of the confirmation of the Assembly of Experts and at the same time the Assembly of Experts enjoys credibility because it has been approved by Imām Khomeinī (*qs*).

The reply to this objection is similar to the case when we have a lit candle at the beginning (first light) and this candle is used to light a matchstick, and then the candle stops burning. Then to light the candle again (second light), we use the matchstick which has acquired its light from the candle. Here no circularity exists because the light to which the light of the matchstick is ascribed was the first light while the thing to which the light of the matchstick is ascribed is the persistence of the candle's light and the second light, and so there is no circularity in it:



In our discussion, we have clarified that first Imām Khomeinī (*qs*) had set up the Council of Guardians and the said Council, in turn, confirmed the qualification of the candidates selected to the Assembly of Experts, but the thing approved by the Assembly of Experts after its establishment is the continuance of leadership of Imām Khomeinī (*qs*) and this has nothing to do with the period prior to it (first light of the candle). The credibility of the said period is not confirmed by the Assembly of Experts but by the general designation of the Imām of the Age (*'a*). Given this, there is no circularity at work.

To sum up, the problem of circularity is actually detected in the systems based upon democracy and populist thought. These systems which suffer from this problem try to attribute it to the theory of *wilāyat al-faqīh*. The truth of the matter, however, is that this problem is ascribed to the democratic systems, and no acceptable and rational reply is given to it. But, as we have clarified in our discussion, ascribing this problem to the system based on *wilāyat al-faqīh* has no justification at all.

The experts and types of specialization

One of the questions and objections raised regarding the Assembly of Experts and its members is related to the necessity of their possession of different kinds of specialization. Let us elaborate on the question. Firstly, the Constitution states that qualifications needed for assuming the Leadership are summarized in three qualifications, i.e. Islamic jurisprudence, justice, and efficiency in managing the society. But, in view of the qualification of the *ijtihād* of the candidates to the Assembly of Experts stipulated in the text of the Constitution, the members of the Assembly of Experts are composed of a group of individuals who have the capability of determining the *walī al-faqīh*'s knowledge of Islamic jurisprudence and justice. As for the *walī al-faqīh*'s competence in managing the society which entails having a set of qualities such as administrative power, familiarity with social issues and events, awareness of the current domestic and world politics and the like, the members of this assembly are unable to make decisions. Therefore, there is a need for some among the Experts who can, with their professional expertise and scientific position in administrative, political and social issues, express their opinion about the Supreme Leader and *walī al-faqīh*'s proficiency in management. Secondly, since in accordance with the existing Constitution, such duties and prerogatives as commandership-in-chief of the armed forces and determining the overall policies of the system including the economic, military, political and other fields are assigned to the Supreme Leader, to determine whether the Supreme Leader can discharge these duties or not

requires the existence of different experts in military, political, economic, and other affairs among the members of the Assembly of Experts so that, in addition to determining the *walī al-faqīh*'s expertise in Islamic jurisprudence and justice, they may be able to assess the qualifications necessary for becoming a supreme leader and *walī al-faqīh*, and give their professional opinions.

As such, the gist of this critical remark is that the condition that the *ijtihād* which the members of the Assembly of Experts enjoy allows only one type of specialists to the Assembly. But, in view of the position of the Supreme Leader in our system and his duties and prerogatives stipulated in the Constitution, it seems that having different types of specialists in the said assembly is also expedient.

In reply to this question, we have to state that firstly, for confirming the qualification of the candidates for the Assembly of Experts, the existence of the condition of *ijtihād* alone is not sufficient. Rather, it is natural that when these candidates are elected to the Assembly of Experts, they can define the Supreme Leader and *walī al-faqīh* which is regarded as a sociopolitical position and not merely a religious one, it follows that in addition to the possession of a good command of *ijtihād*, they themselves have to be well acquainted with the sociopolitical issues. And this matter is treated as a key and important criterion for confirming the suitability of the candidates for the Assembly of Experts.

Hence, we should never suppose that the members of the Assembly of Experts are merely an aggregate of God-wary *mujtahidīn* who have no expertise at all in politics and social issues, or know nothing about such matters. Rather, they certainly have a considerably acceptable level of familiarity with sociopolitical issues. In addition, we have to bear in mind that the presence in the Assembly of Experts of the individuals who are merely statesmen and who are not *fuqahā'* is exactly like the presence of the individuals who are merely *fuqahā'* and who do not have an iota of knowledge about politics. The objection directed to the presence of the *fuqahā'* who lack knowledge about politics and social issues in the Assembly of Experts is also directed to the presence of the politicians who are non-*mujtahid* and have no sufficient knowledge about Islamic jurisprudence. Consequently, the members of the Assembly of Experts must be among the *mujtahidīn* who are familiar with the sociopolitical issues of the day.

Secondly, it is true that the three conditions of the *walī al-faqīh*, i.e. knowledge of Islamic jurisprudence, justice and efficiency in managing the society have been stipulated in the Constitution, but it is worth noting that

having these three conditions on equal terms, is, in our view, not important. Rather, one of them is more important than and takes precedence over the other two. Let us elaborate on it. We believe that what constitutes the fundamental element of our system is Islam. Also in all other countries, management and politics occupy special position and it is incorrect to assume that the leading figure of any country whose system is not based on Islam is not among the administrators and statesmen. So, we have no advantage over the others in this regard. The merit and distinctive feature of our country is that it is governed by an Islamic system. That is, the thing on which we lay emphasis more than anything else and which we consider our main objective in setting up the government and conducting the political affairs is Islam and the spread of its values and laws. Therefore, the leader, the towering figure of such a system, must have, both in theory and practice, the necessary and enough proximity to, fondness of and commitment to Islam and its laws and values. It is for the same reason that we consider that the leader of this country and this system to be a just *faqīh* and we regard his *fiqāhat* (being a *faqīh*) to have precedence over his *'adālah* (his being just [*'ādil*]). *Faqīh* is someone who knows Islam very well and has correct, in-depth and comprehensive knowledge of its teachings and values. If there is no such a person on top of this system to guide it in line with Islam and supervise the Islamic character of the general trend governing the system and its institutions, the establishment of Islamic government will not be accessible. In fact, the system will turn into a system similar to the current systems of the countries all over the world. The sole objective of such systems is to administer the affairs of society, and according to them, its being of Islamic or non-Islamic nature has no meaning, and is of no importance.

Therefore, concerning the *walī al-faqīh* and Supreme Leader of the Islamic system, the preeminent condition is his being *faqīh* and research-based understanding of Islam and its laws. Determining whether or not the Supreme Leader has this characteristic is very crucial and vital, and so this task is entrusted to those who are experts in this field, i.e. Islamic jurisprudence and *ijtihād*. Of course, as we stated, God-wariness [*taqwā*] and familiarity with politics and social issues of the day by the members of the Assembly of Experts and by the Supreme Leader himself are important and are taken into acount.

Regarding possession of expertise in military, economic and other fields, we should say that no leader in the world is expert in military affairs and also expert in political and diplomatic issues, domestic and foreign policies, and is an authority on all these affairs. Mainly the political leaders' management and familiarity with the issues pertaining to domestic politics and foreign

policy is regarded as important. For making decisions on military, economic, developmental and other affairs, these leaders benefit from groups of reliable and well-informed advisers. The same is true of our Islamic system. What the Supreme Leader personally needs is proficiency in management and high and acceptable capability to understand and comprehend politics. Of course, we have pointed out that in view of the Islamic character of our system, along with the characteristics that the leaders in the world possess, the *walī al-faqīh*'s command over another thing, and that is knowledge of Islamic jurisprudence, in particular and about Islam, in general, is crucial. But it is not necessary that the leader himself be an authority on other things and has profound and extensive knowledge of them. In fact, he may benefit from a group of trustworthy advisers who are well-versed in different fields and make use of the prerogatives granted to him to make appropriate decisions.

Thus, we notice that logically, the members of the Assembly of Experts' possession of expertise in various fields—military, economic and others—is not indispensable, and the election of individuals who are God-wary and have the prescribed level of expertise in *ijtihād* and awareness of the society's domestic and international sociopolitical issues of the day is enough for identifying the Supreme Leader and *walī al-faqīh* by the Assembly of Experts.

At the conclusion of this section, it is worth noting that sometimes, it is argued that Islam has different branches of science such as exegesis of the Qur'an [*tafsīr*], scholastic theology [*'ilm al-kalām*], *adīth*, *rijāl*,[1] philosophy, and others. The *faqīh* [scholar of jurisprudence] is referred to as the Islamologist or Islamic scholar while technically, *fiqāhah* means familiarity with the secondary laws of Islam and expertise in jurisprudence (as indicated in the books on practical treatise [*risālah al-'amaliyyah*]). As such, if by *walī al-faqīh* and leader of the Islamic system we really mean Islamologist, then it is necessary that in addition to his authority on Islamic jurisprudence [*fiqh*], he must have expertise in different branches of Islamic science such as *tafsīr*, *kalām*, *adīth*, philosophy, *rijāl*, and the like. This entails that a number of scholars in *tafsīr*, *kalām*, philosophy, and others be among the members of the Assembly of Experts so that they may assess whether or not the Supreme Leader has the required prescribed level of expertise in these fields.

The reply to this critical remark is that the thing which affects the implementation of the Islamic system is the authority on Islamic

1 *Rijāl* or *'Ilm al-Rijāl*: a branch of the science of *ḥadīth* dealing with the biography of the *ḥadīth* transmitters or reporters. [Trans.]

jurisprudence. It is true that Islam has various branches but part of them is relevant to man's esoteric and inner concerns which are referred to as beliefs [*iʿtiqādāt*]. Another branch is related to family affairs while yet a number of things like ritual purification [*ahārah*] and impurity [*najāsah*], prayer and fasting are related to devotional issues, acts of worship and personal conduct. But what has a significant and vital influence on the Leadership of the *walī al-faqīh* and on directing the Islamic system is the familiarity with the sociopolitical laws of Islam. The *walī al-faqīh* must have a profound understanding in this respect and must surpass others, although *ijtihād* in other secondary issues is also necessary. Of course, the other areas of Islam are also important, and *fiqh* and *fiqāhah* in their broad sense also include these branches.

The paradox of discharge

Sometimes, a question which seems to be a puzzler is raised, such as: What will happen if the Assembly of Experts decides that the Supreme Leader lacks the required qualifications and discharges him, and if, at the same time, the Supreme Leader and *walī al-faqīh* finds that the Assembly of Experts has lost its credibility and decides to dissolve it? Will the decree of the *walī al-faqīh* be upheld, and on the basis of the rule of necessity of obedience to him, the Assembly of Experts be regarded as dissolved and its decision of discharging the Supreme Leader be of no avail? Or will, in accordance with the decree of the Assembly of Experts, the Supreme Leader be regarded as lacking the necessary qualifications and so his decision of dissolving the Assembly of Experts be lacking credibility and has no effect?

For elaborating on this question, we have to state that on one hand, it is stipulated in the Constitution that one of the duties and prerogatives of the Assembly of Experts is to supervise over the activities of the Supreme Leader and discharge him when the Assembly finds that he has lost some or all of the necessary qualifications for leadership; for example, if, God forbid, he is found to have committed indecency or a major sin, have strayed from the path of justice and God-wariness [*taqwā*], have lost the right frame of mind and the power to exercise *ijtihād* as a result of an ailment or some other reason, or is no longer capable of comprehending and analyzing sociopolitical issues and does not have the ability of managing the society or the competence necessary for the Leader. On the other hand, it is also possible that one day, the *walī al-faqīh* truly discovers that the majority or all of the members of the Assembly of Experts have given in to bribes and threats, or according to some other logical and plausible reasons, he really comes to the conclusion that the existing assembly is incongruous with the interests of Islam and Islamic society and is to the detriment of the

people. In this case, by invoking the guardianship he has, the *walī al-faqīh* can dissolve the Assembly of Experts even though there is no law which explicitly stipulates that one of the prerogatives of the *walī al-faqīh* is "dissolution of the Assembly of Experts".

It is clear that if we encounter only one of the two above cases, there will be no problem. That is, if only the Assembly of Experts discharges the *walī al-faqīh*, he will be removed from the said position. Also, if only the Supreme Leader and *walī al-faqīh* decides to dissolve the Assembly of Experts, the said assembly will be dissolved accordingly, and by holding an election, a new Assembly of Experts can come. But the problem arises if both these decrees are issued simultaneously, and each of the *walī al-faqīh* and the Assembly of Experts simultaneously gives a decision on the lack of qualification and credibility of the other. This is the source of the paradox of dismissal, and this is what makes one ask: "What will then the nation and country do?"

Regarding this question, first, we have to bear in mind that this enigma is not ascribed only to the theory of *wilāyat al-faqīh*. Wherever two powers, two bodies, or two institutions have the right to give opinion on some of or all the qualification and credibility of the other, such a problem can emerge.

For example, in the recent years, we have witnessed the dispute between the Russian State Duma (lower house of the national bicameral legislature) and the president of the said country.[1] In many other countries such a problem will possibly arise because of the legal prerogatives which each principal institution and government has. At any rate, in general, what can be said here is whichever of the Assembly of Experts and the *walī al-faqīh* issues a decree ahead of the other, its or his decree will be binding and the decree of the other will not be valid and to assume that these two decrees simultaneously occur is merely hypothetical and very rare and practically, to discuss it is of no avail. As we have said, this phenomenon is probably found in other systems and it is not something which is connected only to the theory of *wilāyat al-faqīh* and is taken as a point of weakness versus other systems and theories.

1 This refers to the then Russian President Boris Yeltsin's decision to dissolve the parliament in September 1993 while armed opposition leaders and conservative deputies occupied the parliament building and refused to disband. The following month, troops loyal to Yeltsin stormed the building and arrested the opposition leaders, leaving more than 100 dead. This settlement reached through the use of force is a consequence of the absence of clear constitutional provisions which delineate the powers and resolve the conflicts between the executive and legislature. [Trans.]

However, the important and considerable academic point present in this case is that principally, the Assembly of Experts' duty is announcing the dismissal, and not decreeing it. This is because just as when identifying the Leader and choosing him as the *walī al-faqīh* (the question we have explained in Chapter 3), it is now clear that the task of the Assembly of Experts is not "designating" [*na b*] the *walī al-faqīh*, and it is clear that it is not through the decree of the Assembly of Experts that the *walī al-faqīh* becomes eligible and qualified to the post of Supreme Leadership and *wilāyat al-faqīh*. Rather, he already had the qualifications and all that the Assembly of Experts does is testifying and identifying the person who enjoys the qualities indicated in the general designation of the Imām of the Age (*'a*) during the period of major occultation. Also, with respect to the question of discharge, whenever the Leader loses some or all of the necessary qualifications for Leadership and *wilāyat al-faqīh*, he is automatically discharged from the Leadership and the legitimacy which he enjoys comes to an end. Also for this reason, the Assembly of Experts today determines such deviation and lack of qualifications, nevertheless all his decisions, discharges and appointments, acts and orders are rendered invalid from the time he loses the necessary qualifications. Therefore, just as in the beginning, the task of the Assembly of Experts is to 'discover' and identify the person who enjoys the necessary qualifications, and not to 'designate' him. At the end too, the task of the Assembly of Experts is merely to 'discover' and determine the lack of the qualifications, and the discharge happens as an automatic effect. In fact, one of the merits and salient features of the theory of *wilayat al-faqīh* is that as soon as the least defect emerges in the necessary qualifications required for Leadership, the Supreme Leader will be discharged automatically and his credibility and legitimacy come to an end. This is while today we see even in powerful and known countries in the world such as the United States of America that the president of the country commits a crime and the crime is affirmed by the court and the House of Senate yet, the only effect for his act is that he has to be fined, but as a president he remains in his post. All his previous decisions, works and orders (from the time of performing the crime up to the present) are regarded as credible and legal and subject to no criticism. Furthermore, this president, whose act of bribery is recognized by every group and assembly, is allowed to rule and use all his legal rights and prerogatives. Now, which one of these two theories is more logical and tenable?

We hope that the day when the banner of guardianship [*wilāyah*] and government of the Imām of the Age (*'a*) is hoisted throughout the world and the noble state of the *Ahl al-Bayt* (*'a*) prevails will come, God willing. **?**

Index