

THE SHĪ'ITE CONCEPT OF THE "AUTHORITY OF THE JURIST": In Theory and in Practice

Abdulaziz A. SACHEDINA

The idea that the Shī'ite jurist-theologian (*faqīh*) can assume the all comprehensive authority, including the constitutional and juridical powers, that accrues to the theological Imam in a Twelver Shī'ite state pending the return of the twelfth and the last messianic leader, the Imam of the Age (*ṣāhib al-zamān*), at the End of Time has appeared to many a scholar, both Muslim and Western, an innovation of a sort which deviates from the fundamental aspects of the theological-political doctrine of Imamate. The innovation, according to these scholars, appears to be in the extension of the Imam's authority (*wilāya*¹⁾) to a Shī'ite jurist-theologian in spite of the absence of any such provision in the theological doctrine of Imamate. The reason for this opinion, I believe, lies in the postulate that such an authority of a Shī'ite jurist-theologian can be derived only through an explicit designation (*al-naṣṣ*) by a divinely ordained leader — the process which is acknowledged as the sole method by which the Imam's authority in Shi'ism is established.

The theory of Imamate, it is important to bear in mind, once formulated during the eighth century did not go through any revisions that could have been prompted by certain developments in the political history of Twelver Shī'ite community in the subsequent periods. Thus, even when the temporal authority of the Shī'ite dynasties like the Buyids (10th-11th centuries) or the Safavids (16th century) were established, the theological doctrine of the Imamate of the twelve Imams remained intact.

However, in the absence of the political authority of most of the Shī'ite Imams following the first Imam, 'Alī b. Abī Ṭālib (d.40/661), the religious and social needs of the Shī'ite community very early on gave rise to the institution of the deputyship (*niyāba*, *wikāla*) of the Imams. The proper place for the discussion of this institution was not in the realm of theology which dealt with *usūl al-dīn* (fundamentals of the faith, such as the affirmation of the Unity of God, belief in the Justice of God, Prophecy, the Imamate and the Day of Judgement); rather, since delegation of the Imam's authority in the form of deputyship was necessary in the performance of a number of religious duties covered under the rubric of *al-takālīf al-shar'īyya* (religious-moral obligations derived on the authority of the revelation), it was discussed in the works dealing with jurisprudence.

The principle of *wilāyat al-faqīh* (the Authority of the Jurist), being the logical outcome of the Imam's deputyship in the realm of religious practice, as a consequence, belongs to jurisprudence (*fiqh*), and not to *ilm al-kalām* (dialectical theology) where *usūl al-dīn* are expounded. Although the underpinnings of the idea about the religious leadership (whether the divinely ordained prophecy and the Imamate,

or the legally determined position of the juridical authority) were related to the general question of the theological doctrines of divine justice and divine purposes for human society, evidently the delegated authority of the jurist in the Shī'ite community was treated strictly in works of jurisprudence. In this article I propose to discuss the development of the juridically established principle of *wilāyat al-faqh* and its application in the case of the modern nation-state of Iran since Ayatullah Khumayni assumed the position of the *wilāyat al-faqh* in 1979.

I . Historical Roots of the *Wilāyat al-faqh*

Shi'ism offers the modern world a rare glimpse of the dynamics of religious ideology that embodies postulates about active divine intervention in human history to enable humanity to build an ideal public order.²⁾ Shī'ite jurist-theologians, at different times in history, have undertaken to interpret the parameters of the divine intervention for the construction of a new society and polity. One of the major questions that has arisen in the minds of piety-oriented Muslims has had to do with the existence of injustice in the society, and the obligation of the community in the face of that situation.³⁾ The response to the question of community reaction to the perceived injustice has depended upon the current socio-political circumstances and has been conditioned by the precedents set by the Imams whose answers to similar situations are treated as binding precedents for their followers.

Historically the guidance of Shī'ite scholars, whether leading to radical political action or otherwise, turned on their interpretation of

the two basic doctrines intrinsic to an authoritative perspective or world view that organizes the mundane existence of Shī'ite community. These two doctrines are the justice (*al-'adl*) of God and the leadership (*al-imāma*) of righteous individuals to uphold and promulgate the rule of justice and equity. In the highly politicized world of early Islam there were numerous ideas and conceptions about God's purpose on earth and leadership of human society. The swift conquest of vast territories and the ongoing process of supervising the conquests and administering the affairs of the conquered peoples not only demanded strong and astute leadership, it also required the creation of a system that would provide stability and prosperity. Central to this social, political, and economic activity was the promise of Islamic revelation that only through obedience to God will believers accomplish the creation of a just and equitable public order embodying the will of God.⁴⁾

The promise was based on the belief that God is just and truthful. The proof of divine justice was provided by His creating the rational faculty in human beings and sending revelation through the prophets to guide them toward the creation of the ethical world order. The indispensable connection between the divine guidance, and the creation of an ethical world order provided an ideological mandate for the interdependency between the religious and the political in Islam. It also pointed to some sort of divine intervention necessary in the creation of a just society. Consequently, the orientation of the Islamic belief system was towards envisioning the Prophet and his rightfully designated successors as representing God on earth — the God who deputized them to exercise divine authority to rule over humankind aright. In this way,

the linkage between the divine deputization and the creation of the ideal public order became a salient feature of Islamic ideological discourse almost from the beginning. Accordingly, the basic religious focal point on the creation of just order and leadership, which can create and maintain it, dominates the world view of the Muslims, in general, and of the Shi'ite Muslims, in particular.

The death of the Prophet marked the first crisis in the political history of Islam: circumstances demanded that the Muslims explain the situation that seemed to point toward the breach of divine promise.⁵⁾ Tension was felt in the awareness of the lack of an objective actualization of the Islamic ideal in the external world. The question of qualified leadership to further the divine plan and to enable God's religion to succeed could be seen from the perspective of the Islamic promise of the creation of an ethically just order on earth. The crisis prepared the ground for the emergence of the *shī'a* (the "partisans") of 'Alī as a distinct group in the Muslim community who refused to acknowledge the legitimacy of the three caliphs, Abu Bakr, 'Umar, and 'Uthmān, who had preceded 'Alī in the Medinan caliphate (A.D. 632-656).

The dispute over the question of rightful successor to the Prophet marked the permanent rupture in the unity of the community that would give rise to two distinct schools of thought in Islam, namely, Sunnism, the majority, and Shi'ism, the minority faction. The period that followed this first crisis and tension between the ideal and the real gradually accentuated the growth of discontent among all Muslims. Some were moved by profound religious conviction and deep moral purpose to seek solutions to the injustices which led to revolutions and rebellions as well as discussions and deliberations. This is reflected in

the early Islamic *fiqh* (theology cum jurisprudence) literature that emerged toward the end of second/eighth century. This literature wove together the various threads of Islamic belief and practice.

The most important question that determined the political-religious direction followed by the community dealt with the limitations over the power of a Muslim authority in the state that ideally existed as a divinely approved necessity to promote justice and equity. In addition, the question determined the justifiable courses of action that the community of the faithful could take if the authority in power became unjust, thereby making the state evil. Responses to the above question were greatly influenced by the religious and ethical ideas prevalent among various Muslim factions in connection with the duty of obedience to an unjust ruler that caused disobedience to God. The activist solution to seek redress for wrongs committed by those in authority was by no means limited to the Shī'ites only; rather, dissatisfaction and dissension were widespread among all people.⁶⁾

By the time of the second crisis, the end of the manifest leadership of the Imams through the occultation of the twelfth and last Imam Muḥammad al-Mahdī (A.D. 941), which affected the political jurisprudence of the Shī'ites, the notion of an armed struggle to oppose any nominally Muslim authority regarded as corrupt and degenerate was postponed indefinitely to the End of Time: the revolution would come in a future time of fulfillment. This belief in the messianic revolution to be launched by a divinely guided leader known as the Mahdi to establish the ideal order on earth is shared by all Muslims, although the term "Mahdi" has become associated more with the function of the last Imam of the Twelver Shī'ites.⁷⁾ Furthermore, in Shi'ism, belief in the

future coming of the messianic Imam has served a complex, seemingly paradoxical function. It has been the guiding doctrine behind both radical political posture, calling upon the Shī'ites to remain alert and prepared at all times to launch the revolution with the Mahdi who might appear at any time, and behind a quietist waiting for God's decree, in almost fatalistic resignation, in the matter of the return of this Imam before the Day of Judgement. In both cases, the main problem was to determine the right course of action at a given time in social and political setting. The adoption of the radical or quietist posture depended upon the interpretation of conflicting traditions attributed to the Shī'ite leaders about the circumstances that justified revolutionary operation. Resolution about the prudent course of action, in turn, was contingent upon the agreement about and acknowledgement of the existence of an authority who could undertake to make the Imam's will known to his followers.

The most important issue during this period for the Shī'ite community was the right guidance that was available to the believers even though the Imams were not invested with political authority and were living under the political power exercised by the de facto governments. With the termination of the theological Imamate in the tenth century when the last Imam went into occultation, the Shī'ites were faced with the issue of the continuation of this guidance. In the absence of the Imam's political power (although he still had the right to demand obedience from his followers) his authority had been located in his ability to interpret divine revelation, both the Qur'an and the Prophet's paradigmatic behavior, infallibly. The Imam's elaboration of the revelation formed, in fact, part of the religious obligations binding on

believers. Moreover, this interpretation was regarded as the right guidance needed by the people at all times. Consequently, during the prolonged absence of the last Imam, the Shī'ites sought that guidance in the authority that could assume the decisive responsibility of guiding the community to Imam's will under critical situation.

However, it was not just for anyone to undertake the decisive responsibility to guide the community by engaging in the interpretation and discovering all the principles in the Islamic revelation. It certainly needed authorization from a divine source, a sort of designation that could guarantee to Muslims the availability of right guidance. Only such an authorized person could, in the absence of the Imam, assume the authority that accrued to the Imam as the rightful ruler in Islam.

Following the occultation, the Shī'ites believe that this authority was assumed by the deputies of the Hidden Imam, who were believed to have been directly appointed by him. This period extended for some seventy years following A.D. 874, and is known among the Shī'ites as the Short Occultation, during which the prominent members of the Shī'ite community became functional imams.

But in view of the prolonged occultation of the Imam and the absence of a special designation during this period, no realization of just rulership was possible. The year A.D. 941 marked the beginning of this prolonged concealment known as the Complete Occultation which extends to the present time. This anomalous situation in the leadership of the community was reflected in the Shī'ite jurisprudence, where the recognition of the fact that the Imam had not designated any specific individual to function as his deputy during the Complete Occultation reemphasized the separation between the constitutional authority

(which could exact or enforce obedience) and the juridical authority (which reserved the right to demand obedience, depending on legal-rational circumstances) that had existed during the lifetime of the Imams under the *de facto* Muslim rulers. Only the investiture of authority and the assuming of political power could establish the rule of justice and equity.

However, delegation of the Imam's authority to an individual who could assume both the religious authority and the political power of the Imam when there was no Imam to monitor the exercise of that authority was dangerous. This danger was perceived by the jurists, who took upon themselves to produce a coherent response to this situation in their works of jurisprudence in which the Imamite doctrine that the Imam is the only Just Ruler (*al-sultān al-'ādil*) was asserted. Pending the return of the Hidden Imam, the possibility of absolute claim to political power and religious authority resembling that of the Imam himself was ruled out. Nevertheless, the rational need to exercise authority in order to manage the affairs of the community was recognized and authoritatively legalized. Consequently, the duty of guiding the community was undertaken by the qualified Shī'ite jurists who, according to the Shī'ite belief, became the leaders of the community through a general designation of the Hidden Imam.⁸⁾

This development consolidated the authority of the Shī'ite jurists by initiating an unprecedented relationship between the believers and their religious scholars. It also generated a strong sense of devotion to the religious leaders in their position as the general deputies of the Imam after A.D. 941. Gradually, this sense of loyalty made it possible for the emergence of powerfully influential religious leadership of other

than the theological Imams in the Shī'ite community.

II. Legitimation of the Authority of the Jurist in Shī'ite Jurisprudence

From its inception Shī'ite thought has given a central position to the question of religious leadership in its ideology. The question has assumed critical importance during the absence of the theological Imamate. This is reflected in the debate among the Shī'ites regarding the theological propriety of the religious scholars to assume the leadership of the Shī'ite community as the specifically designated deputies of the Hidden Imam. Regardless of the importance attached to the continuation of religious-moral guidance the Shī'ites needed to survive under the de facto governments of their times, it was not just for anyone to assume the function of guiding the community.

As in the case of the theological Imamate, which was established through a clear designation by the divinely ordained authority of the Prophet or the previous Imam, the Shī'ites expected some kind of authorization from the Imam himself to institute the deputyship of a jurist to guarantee the availability of authoritative Islamic guidance. But in the absence of special designation during the Complete Occultation no realization of this prerequisite was possible. This issue of the proper designation of leadership was discussed, and exegetically resolved, in the works of jurisprudence where assuming deputyship on behalf of the Imam became a prerequisite in the performance of certain public functions, like, for instance, administration of justice. The

concrete historical circumstances required that jurists make a distinction between “power” and “authority,” and acknowledge that both the investiture of authority and the assumption of political power were necessary for the administration of justice.

However, the assumption of both the authority and the power of the Imam without specific deputization to guarantee the Imam’s confidence in that the individual, as pointed out earlier, was deemed as dangerous by the jurists themselves. The exercise of absolute authority without divine protection in the form of infallibility that the Shī’ite Imam enjoyed as a successor of the Prophet rendered government by anyone beside the Imam inevitably corrupt. This attitude towards contemporary governments can be discerned in the Shī’ite jurisprudence in which these jurists responded to the critical question related to the nature of the Imam’s deputyship while asserting the theological Imamate of the infallible Imam and ruling out the possibility of absolute claim to political power and authority resembling that of the Imam himself. Nevertheless, the rational need to manage the affairs of the community in its total existence was recognized and judicial decisions were made to legitimate exercise of Hidden Imam’s authority, excluding his political power.

The establishment of the Twelver Shī’ite dynasties like those of the Buyids (A.D. 945-1055), the Safavids (A.D. 1501-1786) who converted Iran to Shi’ism, the Zands (1750-1794), the Qajars (1794-1925) and the Pahlavis (1925-1979) during the occultation did not change the basic doctrine of the Imamate. According to this doctrine, as discussed earlier, the twelfth Imam was the only legitimate ruler of the Muslim community and he would return at the End of Time to establish the

Islamic public order. Nonetheless, the jurists, living under the contemporary "unjust" governments, had conceived a profile of a just Shī'ite ruler, however temporary and fallible, who could, in the interim, follow the Qur'anic mandate of creating a public order that would "enjoin the good and forbid the evil."

With the establishment of the Shī'ite temporal power the Shī'ite jurists individually responded to specific political situation created by this new situation in the political history of the community. There was a lack of any definite organization or a strict uniformity in their implicit opinions about the emerging Shī'ite political power. The Shī'ite jurists during this formative period of Twelver Shī'ite thought (ninth-twelfth centuries), although often living under some sort of court protection (especially under the Shī'ite dynasty of the Buyids), continued to be private individuals as they are today. Although less willing than their Sunnite counterparts to relax the limits of Islamic authority or to encourage obedience to the unjust and tyrannical governments, Shī'ite jurists were themselves engaged in rationalization of and accommodation to their historical circumstances. These responses to the existing political order reflect the tensions within the Shī'ite political jurisprudence created not only by the Complete Occultation of the Imam, but also by intellectual interaction between the Shī'ite and Sunnite scholars. The occultation of the Imam and the minority status of the Shī'ites made it possible, and in some instances imperative, for them to be quite pragmatic and realistic in their contacts with contemporary *de facto* governments and in the formulation of their judicial opinions about them, more so if the *de facto* rulers happened to be professing Shī'ites.

It is for this reason that each work of jurisprudence is abundantly

documented by quotations from the Qur'an and the Prophetic practice as well as the critical evaluation of the opinions of precedent-setting jurists. The judicial decisions and the supporting rational and traditional evidence reveal that these decisions were made in intimate dialogue with specific situations in the Muslim polity at the time.

In order to reconstruct the development of the jurist's political authority that culminated in the constitutionalization of the powerful position of an ayatullah in the modern nation-state of Iran, it is necessary to investigate the Shī'ite jurisprudence from period to period, as a source for the study of the concrete situations in the Muslim polity at a given time in history when the source was actually produced. Such a historical approach would, as far as possible, allow the primary material to speak for itself within its established socio-political context. I have attempted this task in my work on *wilāyat al-faqīh*, *The Just Ruler in Shī'ite Islam*, where I have examined the juridical opinions in the matter of a jurist's authority in the light of the political and legal jurisprudence worked out by Twelver Shī'ite scholars from the early days of the Shī'ite Imams to the present time. Since the juridical authority evolved as the period of occultation became prolonged and the political history of the Shī'ites took a different turn, especially in Iran, it is convenient to treat the opinions of the Shī'ite jurists in regard to the nature of deputyship and the extent of its authority into four historical periods⁹⁾ when major judicial decisions with implications for the contemporary development in the nature of Shī'ite leadership were inferentially deduced.

The first was the Buyid era (A.D. 945-1055), a decentralized Iranian dynasty that controlled such centers as Baghdad in Iraq and

both Shiraz and Kirman. This was the first instance, since the caliphate of the Imam 'Alī b. Abī Tālib (A.D. 655-60), that the Twelver Shī'ite dynasty had come to power. However, the Buyids had come to power by use of force and did not lay any claim to religious authority. In fact, for political expediency, they allowed the Sunnite 'Abbasid caliph to remain as the head of the Muslim community. Consequently, the Buyid assumption of political power did not affect the basic Shī'ite theological Imamate and its corollary regarding the constitutional leadership of the twelfth Imam. Nevertheless, according to the juridical formulations at this time, a number of obligatory religious acts had implications for the theological Imamate, more particularly, the Imam's sole right to political authority in a Shī'ite public order. Some of the religious obligations in the Islamic law because of their public implications were ruled by the jurists to be under the direct supervision of either the Imam in his position as the political head, or his specifically designated deputy. Thus, for instance, in the case of waging offensive *jihād* against non-believers, Shī'ite law required that only the Imam as the head of Islamic polity could initiate the war against the non-believers, or that he could appoint his deputy to undertake it on his behalf. Evidently, in the absence of the Imam or his special deputy during the occultation, the question of offensive *jihād* was ruled as suspended until the Imam reappeared as the messianic restorer of pristine Islam.

As a minority living under the de facto governments, whether Sunnite or Shī'ite, in the tenth century, the question of engaging in offensive *jihād* was of theoretical importance with little or no relevance to the actual existence of the Shī'ites. Nonetheless, there were other obligations in the Islamic law, such as the duty of preservation of social

order, collection of religiously ordained taxes like *zakāt* (poor tax), *khums* (the fifth), and administration of justice, which had relevance for the everyday life of the community under changing socio-political circumstances. These obligations could not be postponed indefinitely and the jurists issued judicial decisions that reflected the legitimation of major development of the Buyid period, namely, the assumption of leadership of the Shī'ite community by their qualified jurists. This assumption of leadership was in turn accommodated as a necessary extension of the juridical-religious deputyship of the theological Imamate which had postulated the continuation of the dependable guidance through the functional imams (theologian-jurists) for the Shī'ites.

As the functional imams the Shī'ite jurists became the interpreters and the custodians of the Shī'ite creed, including the theory of the spiritual and temporal authority of the Imams. The Buyid rise to political power, although an event without a precedent in the post-occultation political history of Shi'ism, had absolutely no impact on the central doctrine of the Imamate, and, accordingly, no attempts were made in theological writings to explain this political development in the context of the constitutional authority of the infallible Imam. The Shī'ite jurisprudence proceeded to extrapolate judicial decisions with twofold attitude: first, the continuation of the socio-religious structure of the community was not dependent upon the temporal authority of the Shī'ite dynasty like the Buyid; and second, the consolidation of the deputyship of the theologian-jurist was essential for the survival of the Shī'ite ideology during the occultation. This twofold attitude allowed the jurists to regard it permissible for a qualified member of their class

to substitute for the Imam or his specifically designated deputy in almost all cases in which religious obligations with public ramifications were required to be performed. In other words, the jurists of the classical age regarded deputyship as a sort of trust on behalf of the Hidden Imam, making it legally permissible for any of them to act as a trustee of the Imam among his followers, to undertake all those functions that the Imam as the head of the community was entitled to undertake himself, or would have delegated to someone qualified to represent him. The underlying juridical principle in this legitimation process was the rationally derived rule about the general interest of the community that authorized the jurists to undertake functions of political nature as functional imams.¹⁰⁾

The second period (twelfth-fourteenth centuries) that marked further development in the elaboration of the Shī'ite juridical authority was concurrent to the political turmoil in the central Islamic lands following the breakdown of the Sunnite political authority and the destruction of Baghdad-based 'Abbasid caliphate by the Mongols in the thirteenth century. This adverse situation in the Sunnite world, in addition to the downfall of the Shī'ite Buyid dynasty under which the Shī'ites had enjoyed relative peace and security, affirmed the jurists' although cautious but positive attitude regarding the existence of a just Shī'ite political authority (other than that of the infallible Imam) willing to consider the implementation of the Islamic laws as not only expedient but necessary. The religious-rational justification for the existence of such an authority was found in the Qur'anic decree requiring "enjoining the good and forbidding the evil," which, in spite of the absence of the Imam, remained in force. The commitment to uphold

this divine obligation rendered the rule of that authority just and it provided juridical grounds to apply the phrase “the just ruler (*al-sultān al-‘ādil*)” to any Shī‘ite ruler committed to the promulgation of the divine norms in Muslim polity. In addition, there was also theological ground, albeit indirect, to conceive a just ruler other than the Imam during the interim when the community regarded the existence of a just ruler as an end in itself only inasmuch as the community saw such a person as a means for the “divine grace (*lutf*)” for “drawing close to obedience to God and away from disobedience.”¹¹⁾

During this period of political turmoil, especially when the central power of Muslim rulers had disintegrated, administration of justice by members of the religious class became one of the most important sources of delegated power in preserving the popular sense of justice. The prestige and influence of the Muslim judge as the ruler’s appointee in matters related to administration of justice became immeasurable. In Shi‘ism, even when the administration of justice in the Muslim empire in general followed the rulings of the major jurists of the Sunnite legal schools at this time, the institution became the most fundamental source for extrapolating and elaborating the growing prestige and political power of the jurists. By this time their position as the deputies of the Imam was well-established. Consequently, their ensuing competence as the administrators of justice rendered them the protectors of the people against the unjust behavior of those in power. Moreover, the expectations of the Shī‘ite community, required the jurists to undertake the wider role of the “functional imam” (beyond their already acknowledged role as the interpreters of the Imam’s teachings), which was carefully worked out in detail in those sections

of jurisprudence that dealt with the obligations with political implications like the administration of legal punishments and use of force in "enjoining the good and forbidding the evil."

The third period of development in the juridical authority that culminated in the "Authority of the Jurist," was the Safavid era (1501-1786). The period witnessed the establishment of the Shī'ite state in Iran under the Safavids. The successful conversion of the Safavid domains to Shi'ism made it possible for the Shī'ite jurists to validate the Shī'ite temporal authority by interpreting the rational necessity for the management of the affairs of the community by the ruler of the age. It was also such a necessity that made it desirable for the implementation of the divine scales of justice expounded in the Shari'a. Such a desirability in the Shī'ite public order had enormous implications for the growth of the authority of the jurist as the "guardian" of the community pending the return of the Hidden Imam. The jurists developed an argument justifying their "guardianship" and its extent in the Shī'ite polity. According to this argument, the jurist had to be asked by the Shī'ite ruler to undertake the responsibility of the execution of the divine norm. The authority of the jurist, more specifically his wielding of the all-comprehensive authority as the functional imam, had the same validity, in this line of reasoning, as the power of a ruler (*sultan*, in the absence of the ideal caliph [*khalīfa*] in the Sunnite political thought) in whom authority was invested in the Muslim public order. Moreover, just as the investiture of authority by a legitimate ruler was a precondition to assuming any official political function in Islamic public order, so the investiture of the all-comprehensive authority by the Imam was regarded prerequisite to carry out the obligation of

“enjoining the good and forbidding the evil” by use of force. However, during the absence of the Imam when such a specific investiture was impossible, it was the rational necessity of upholding the divine decree in connection with “enjoining and forbidding” that provided the main religious grounds for the existence of any government, including the Shī‘ite one of the Safavids. The opinions of the leading jurists of this period reveal the difficulty of legitimating the all-comprehensive authority of the jurist in view of any specific investiture from the Imam or the ruler of the age.

The fourth period in the progression of the Shī‘ite juridical authority began with the consolidation of the Shī‘ite Qajar dynasty in Iran in the late eighteenth century. The “Authority of the Jurists” received fuller elaboration in the works produced by some eminent jurists who instituted the authority of the jurists, as adumbrated in the works of the previous generations of Imamite jurists, on theological-juridical exposition of the deputyship of the Hidden Imam, until it reached its logical conclusion in 1980 in the enactment of the *wilāyat al-faqh* in the constitution of the modern nation-state of Iran. During this fourth period, the position of the jurist as the guardian of the community became institutionalized and centralized through the process of an obligatory religious requirement for all the Shī‘ites to accept the authority of a learned scholar (*mujtahid*) in the position of *marja’ al-taqlīd* (“source of imitation [for religious practice]”). With the weakening and discrediting of the Shī‘ite temporal authority, the jurist in the position of *marja’ al-taqlīd* became the most authoritative religious figure in Shi‘ism, to the extent of being conceived as an alternative head of the Shī‘ite public order who could fulfill the function

of the just ruler. In the popular Shī'ite perception regarding their religious leadership, the *marja' al-taqlīd* was the specifically designated deputy of the twelfth Imam authorized to assume the duty of guiding the community during the Complete Occultation. Moreover, in the belief of the Shī'ite masses, the learned, pious *mujtahid* had a more legitimate claim than the monarch to exercise the comprehensive authority in the name of the Hidden Imam pending his return. The *mujtahid* in the position of *marja' al-taqlīd*, then, came to be entrusted with the rational interpretation (*ijtihād*) of the sources of Islamic jurisprudence, the Qur'an and the Sunna, in the light of the contemporary socio-political exigencies, and his rulings in any matter became binding on the Shī'ite community.

However, to generate the loyalty of the Shī'ites the *marja' al-taqlīd* had to demonstrate objectively, through the combination of sound belief, knowledge, and character,¹²⁾ that he could function as the guardian of the community. Moreover, his reputation as the most learned was established through his publications on the religious subjects, and the training of disciples. His character was established by his piety which qualified him, among other things, to receive the religiously ordained taxes for distribution among the needy.

The Qajar and post-Qajar era coincided with the introduction of modernization, that is a modern system of administration, modern education, and modern values. The reforms introduced in the legal and governmental systems through constitutionalism represented the attempts at modernization of the traditional Islamic social and political institutions in the Iranian domains, which generated an intense debate between different factions belonging to a spectrum of ideologies.¹³⁾

The constitutionalist idea confronted the relative cultural harmony in the traditional order under the last Qajar monarches. Consequently, modernization in Iran, however gradual and at times mismanaged, created tensions in the socio-political life of the Shī'ite community. In addition, the uneasy and at times hostile encounter between the traditional Islamic culture and the modern Western values led to the undermining of the effectiveness of the traditional Shī'ite leadership in dealing with complex socio-political developments of the time. The Shī'ites, seeking the guidance from their functional imams in the area of socio-political relations in the modern situation exerted enormous pressure on their *marja' al-taqlīd* to demonstrate the feasibility of traditional Islamic responses under changed expectations.

In the early part of the twentieth century the position of the most prominent among the Shī'ite jurists became increasingly confined to strictly religious matters, a development which forced their withdrawal from the socio-political setting. The consequence of this thinking was that both the leadership and the general body of the Shī'ites had been conditioned to accept that, doctrinally as well as functionally, Shī'ite jurists could not assume any political leadership, especially in a modern nation-state. The religious response to this attitude of political resignation among the Shī'ite leadership was the reassertion of the reinterpreted and developed principle of the "Authority of the Jurist (*wilāyat al-faqīh*)" in the celebrated Najaf lectures of Ayatullah Khumayni delivered between January 21 and February 8, 1970.¹⁴⁾

The principle of *wilāyat al-faqīh* offered the theological sanction by which to legally consolidate the position of a Shī'ite jurist as the "executor of the affairs of the Shī'ites" in a Shī'ite state in modern

times. This consolidation of a qualified jurist's position was substantiated by comparing the authority exercised by a de facto ruler like a Qajar or Pahlavi shah assuming and exercising the discretionary authority of the twelfth Imam in a Shī'ite political order, and that exercised by a well-qualified jurist as a de facto functional imam during the occultation. Such comparison, however restrained and subtle, can be discerned in the Ayatullah Khumayni's exposition of the principle of *wilāyat al-faqīh*.

III. *Wilāyat al-faqīh* since the Islamic Revolution in Iran

The elaboration of the doctrine of *wilāyat al-faqīh* has, as delineated above, frequently been determined in the history of Shi'ism by the political context and even by the changing outlook and application of the jurists themselves. Ayatullah Khumayni's own treatment of the principle of *wilāyat al-faqīh* corroborates this changing perspective and there is a noticeable and significant difference between his pre-revolution and post-revolution position on the controversial aspect of the political authority of the jurist, namely, whether it is all-comprehensive and thus absolute like that of the infallible Imam or not.

Khumayni's earliest public statement regarding the "Authority of the Jurist" appeared in the work entitled, *Kashf-i asrār*.¹⁵⁾ The book is a detailed response to the anti-religious tract which includes critical statements about the claim to the political power by a *mujtahid*. The presentation of the concept of *wilāyat al-faqīh* in *Kashf-i asrār* is on

cautious, traditional lines found in the works of prominent jurists of the Qajar and post-Qajar era and is enunciated with an observation that the doctrine has been from the very beginning a controversial matter among the jurists who have disagreed among themselves on the “fundamental question whether [a jurist] possesses the *wilāyat*, and the extent of *wilāyat*, the scope of its jurisdiction which happens to be a matter related to the juristic derivatives.”¹⁶⁾ Furthermore, he makes it clear that the fact that the jurists possess the *ḥukūmat* (the authority to administer justice) and the *wilāyat* at this time does not mean that they are at the same time “the king, the vizier, the military personnel,” and so on. Rather, Khumayni proposes the establishment of an assembly made up of the qualified, god-fearing jurists in the place of the corrupt assembly (*majlis*) under the Shah. Such a body should, in turn, proceed to elect a just ruler (*sulṭān ‘ādil*) who would not be averse to the divine laws and would not rule with injustice and tyranny.¹⁷⁾ Similarly, if the Consultative Assembly (*majlis-i shūrā*) is composed of the pious jurists or is kept under their supervision, as required by the Constitution, then the state would achieve its goal of preserving justice and welfare. In other words, Khumayni’s proposition does not rule out the possibility of the existence of a just ruler as the executive arm of legitimately established Majlis of the jurists. His concluding observation in this connection deals with the peaceful role played by the *mujtahids* in the Islamic world. They, Khumayni affirms, did not oppose the independent status of their countries even when they encountered the unjust conduct of the rulers and recognized the unjust system they perpetrated. In view of this peaceful mission pursued by the *mujtahids*, when they speak about the extent of their right to administer justice

(*ḥukūmat*) or to exercise their *wilāyat*, they do not go beyond a few items properly specified in the jurisprudence, including "[the *wilāyat*] to issue judicial decisions, to adjudicate, and to intervene in protecting the wealth of a minor, or legally incapable person. They never bring the matter of exercising political authority (*ḥukūmat*) among these items, nor do they speak about political power (*salṭanat*), in spite of their being fully aware that except for the law of God all other legal systems [obtained from Europe] are invalid and ill-suited [for the Muslim peoples]. However, they respect these very ill-suited laws and do not reject them, and believe that they should be tolerated so long as the system does not improve."¹⁸⁾

This hesitant posture in *Kashf-i asrār* changed to the more activist stance in the celebrated Najaf lectures of 1970 regarding the authority of the jurist in the Shī'ite nation that culminated in the present doctrine of *wilāyat al-faqīh*. The title given to these lectures, namely, *al-Ḥukūmat al-islāmiyya*, suggests the transformation of the principle of *wilāyat al-faqīh* to a form of government necessitating the subordination of political power (*salṭana*) to the divine norms elaborated in the Islamic jurisprudence. In other words, the Islamic government is the one in which the religious-moral authority of the jurists prevails in all the branches of a modern government, namely, legislative, executive, and judicial. The lectures, accordingly, outline the urgency on the part of the jurists to assume positions of responsibility in actualizing the goals of the divine governance for the humanity.

Ayatullah Khumayni, then, introduces *wilāyat al-faqīh* as a "subject that in itself elicits immediate assent and has little need of demonstration, for anyone who has some general awareness of beliefs and ordinances

of Islam” and attributes controversies surrounding its extent to “social circumstances prevailing among the Muslims in general, and in the teaching institution (*hawza-yi ‘ilmiyya*) in particular,” in the context of Iran.¹⁹⁾

Undoubtedly, the single most important issue that still continues to dominate the controversy about the *wilāya* among the religious scholars is the scope of the jurist’s political authority in the modern nation-state which invests its authority in the constitution. As I have shown in my work on *The Just Ruler in Shī‘ite Islam*, there are a relatively restrained number of the jurists who have conceded the *wilāya* of a jurist constituting more than what Khumayni regards as the legitimate items in the *wilāyat al-faqīh*, as enumerated in his *Kashf-i asrār*. In general agreement with the traditional judicial opinions even in the Najaf lectures, in spite of his assertive declaration in the ability and the right of the jurist to assume wider political powers in a Shī‘ite state, Khumayni has not conceded the absolute (*muṭlaqa*), and all-comprehensive (‘*amma*) *wilāya* to the *mujtahid* which he maintained to accrue to the jurist in his *fatwā* of January 7, 1988.²⁰⁾

Before the issuance of this *fatwā*, following the overthrow of the Shah’s regime and the institution of the Islamic Republic there was a noticeable absence of references to the principle of *wilāyat al-faqīh* in the declarations of the Ayatullah Khumayni. In line with the title of his Najaf lectures, there were constant references to the “Islamic government (*ḥukūmat-i islāmī*)” and following the establishment of Islamic Republic to “Islamic republic (*jumhūrī-yi islāmī*)” in the place of *wilāyat al-faqīh*. This silence on the subject of *wilāyat al-faqīh* led Professor Hamid Algar in early 1979 to ask a prominent member of the

revolutionary council, who at that time was visiting the United States, whether in his opinion the form of government to be established after the revolution would incorporate the principle of *wilāyat al-faqīh*. Whereupon he replied with a categorical negative saying that "Imam Khomeini had not been heard to speak about *wilāyat-i faqīh* for a long time; and it was highly unlikely that he himself still believed in the necessity or the legitimacy of this principle."²¹ Even during the drafting of the constitution, according to Bani Asadi, who was the minister of Justice in the provisional government under Mehdi Bazargan, had presented the draft constitution to Khomeini, who had not made any notable objections to it nor insisted on the insertion in it of the concept of *wilāyat-i faqīh*.²²

However, judging from the statements regarding the role of the *mujtahid* in the Shī'ite state in *Kashf-i asrār* and the detailed Najaf lectures, the notion of the *wilāya* was not only present in Khomeini's mind when he assumed power in 1979; it was also the only valid juridical source for legitimating his own as well as his provisional government's authority after naming Mehdi Bazargan as the prime minister. Thus, in his statement following Bazargan's appointment Khomeini declared:

By virtue of the *wilāyat*, (authority) that I have from the Sacred Legislator (*sharī' al-muqaddas*), I have appointed him [Mehdi Bazargan] and it is therefore incumbent to obey him.²³

In this statement of delegation of authority the theological-juridical implications are immense for the constitutional authority of the jurist.

First, by virtue of the *wilāyat al-faqh* Khomeini saw himself as possessing juridically conferred authority to designate Mehdi Bazargan to head the government of Iran. Second, because of the religiously ordained nature of his authority as the “general deputy,” representing the infallible Imam, indirectly obedience to Khomeini’s decree, and more immediately, to his appointee, was ruled obligatory. This statement should be regarded as the logical conclusion of Khomeini’s adumbration of the juridical authority in his *Kashf-i asrār* where he explicitly maintains that God’s government cannot be established without the *mujtahid*’s direct supervision.²⁴⁾ Moreover, it antedates the terms of its enshrinement in Chapter Eight of the Constitution of the Islamic Republic which is entirely devoted to *wilāyat al-faqh*.²⁵⁾

However, since the broad interpretation of the principle, as the above-cited proclamation of Khomeini indicates, had implications for the doctrine of the theological Imamate, and in some ways, as argued by those who were suspicious of such an arrogation of the infallible Imam’s authority on the part of the jurist, the ideological confusion over the power of the jurist has beset Iran since the revolution.²⁶⁾ The ideological problem stems from the constitutional principle of sovereignty of the people as exercised through their elective representatives in the modern state and the principle of religiously invested sovereignty which if implemented absolutely through the office of the *walī al-faqh* can render the constitution invalid.²⁷⁾ In other words, some kind of tension or even contradiction exists in an imperfect compromise worked out between the principle of religiously ordained absolute sovereignty of the person holding the *wilāya* and the constitutionally founded sovereignty by the people.

The confusion and the problems that existed in the post-revolution Iran in the matter of exercise of relative powers of different branches of government, especially the legislative and the executive, can be traced back to new political system under the *wilāyat al-faqīh*. It is, however, paradoxical that there was no attempt made in Iran to undertake serious substantial and theoretical treatment of this central principle until the issuance of the January 7, 1988, *fatwā* of Ayatullah Khomeini.²⁸⁾ Even in the centers of Shī'ite learning, the religious establishment, where there existed misgivings about the claim to all-comprehensive *wilāya* of the jurist in the light of their perceived role as the protectors of the people's sovereignty and independence, there was an understandable silence on the issue because, according to the official position on the subject as defined by Khomeini in the most explicit terms: "Opposition to *wilāyat-i faqīh* is denying (attempting to refute) Imams and Islam."²⁹⁾ Unquestionably, the triumph of the revolution under the religious leadership, was assumed, at least by those in the government, as the government of the deputy of the Hidden Imam, the functional imam, Ayatullah Khomeini.

This clarification of the scope and meaning of *wilāyat al-faqīh* in 1988 had to await the crisis created by the failure of the government since the revolution to resolve important problems of society and economy in accordance with Islamic laws and criteria. Furthermore, unresolved questions about a number of legislative measures caused the reappearance of the ever present debate between those religious scholars who take the prohibition of human prerogative to legislate in the narrow and literal sense, and those who, on the contrary, permit further legislation on the grounds that the traditional jurisprudence as

the series of guidelines is insufficiently exhaustive in its content for the solution of complex problems faced by modern society.³⁰⁾ The question centered on the Islamic propriety, that is the legal validity, of measures passed by the parliament and the important figures in the government. Indirectly, the question casts doubt on the assertion of the religious class in the modern age that Islam as a way of life has its own distinctive solution for the main problems of humanity, and it challenged the ability of the jurists to provide coherent responses to concrete questions like redistribution of land for public benefit, or intervention in the relations between the employer and the employee to attain some measure of justice for which the traditional jurisprudence had no solutions.³¹⁾

The dichotomy between human legislation in the modern parliament and the Islamic propriety to undertake such an activity was apparently the origin for the existence of the Council of Guardians which is formally appointed to approve the legislation as being in conformity with the Shari'a. On several occasions the parliament has encountered opposition from the Council of the Guardians for passing measures contrary to the traditional jurisprudence. Consequently, a number of matters dealing with urban land, ecological protection, nationalization of foreign trade, and so on were held in suspense because of the unresolved differences of opinion between the Majlis and the Council of the Guardians. This persistent deadlock in determining the scope of the power of the state to intervene in matters that assured some measure of justice in the society served as the background to Khomeini's *fatwā* asserting the supremacy of the Islamic state under the *wilāyat al-faqīh* in preserving the welfare of its citizens.

The *fatwā* was issued in the form of a letter to the President 'Ali Khamnei whose Friday sermon had touched upon a sensitive matter in the Prophet Muhammad's mission on earth. Apparently, Khamnei had concluded that the Prophet's function was to deliver the religious message and the creation of a state was not within the scope of his primary mission. In response to this conclusion, Khamayni took up to publish his response whose key part after the introductory formalities was as follows:³²⁾

It appears from your excellency's statements at the Friday prayer that you do not regard government to be equivalent to the absolute guardianship (*wilāyat-i mutlaqa*) which was bestowed on the most noble Prophet (peace be upon him and his progeny) by God, and which is the most important part of the divine ordinances, having precedence over all secondary ordinances (*ahkām-i far'īyya*).³³⁾ Your interpretation of what I have said that the government is empowered to act only within the framework of the existing [secondary] divine ordinances [preserved in the Shari'a] runs entirely counter to what I have in fact said. Were the powers of government to lie only within the framework of secondary divine decrees, the designation of the divine government and of absolute deputed guardianship (*wilāyat-i mutlaqa-yi mufawwada*) to the Prophet of Islam (peace be upon him and his progeny) would have been in occurrence entirely without meaning and content. Let me refer to some of the consequences of such a view — consequences which no one could accept.³⁴⁾ For example, the

laying of roads that necessitates the confiscation of houses or of the land on which they stand is not provided for within the framework of the secondary divine ordinances. Military conscription, and the compulsory dispatch of soldiers to the front, forbidding the import or export of foreign currency, or of various kinds of goods, the prohibition of hoarding, customs duties, taxation,³⁵⁾ the prohibition of exorbitant pricing, price regulation, the prohibition of narcotics and addiction, with the exception of alcoholic drinks, prohibiting the bearing of all kinds of arms, and hundreds of similar measures, none of these, according to your interpretation, are among the powers of the state. *"I must point out, the government which is a branch of the absolute guardianship of the Prophet of God, is among the primary ordinances of Islam, and has precedence over all secondary ordinances such as prayer, fasting, and pilgrimage."*

The last statement (italicized) in the above-quoted text is the key part of the *fatwā* which was open to a whole variety of interpretations, both in Iran and in the West among the scholars of Middle Eastern studies. The apparent sense of Khumayni's declaration suggests that political considerations could override tenets of the Shari'a. This is the sense in which most Western scholars have taken the statement to purport and it has support in the political history of Islam when those in power, whether the Sunnite caliphs or the de facto *sulṭāns*, did in fact overrule the dictates of the Shari'a norms for political expediencies.

However, when examined in the context of the Shi'ite rational theology, the statement is the reassertion of a fundamental belief

among the Shī'ites and the Mu'tazilites, namely, the essential inter-relationship between the divinely ordained absolute, infallible religious leadership (the Prophethood or the Imamate) and the creation of the divinely sanctioned order. The existence of the government under the Prophet or the Imams is regarded as a fundamental prerequisite for the performance of the secondary divine ordinances elaborated in the *'ibādāt* (God-human relationship) and *mu'āmalāt* (human-human relationship) sections of the Shari'a. Accordingly, the existence and consolidation of the government is rendered among the primary divinely mandated institutions that have priority over the secondary ordinances such as prayers, fasting, and so on in the Shari'a. In other words, the primary expression of Islamic belief system is not the conventionally seen fundamental pillars of Islamic faith; but, rather the comprehensive relationship of the Muslim community to legitimately constituted authority in Islamic public order. This is the meaning of the cardinal doctrine of *wilāya*, and it is the sole criterion for judging true faith in Shi'ism.³⁶⁾

Thus, there is no evidence of a doctrinal breach in the *fatwā* when the Islamic government is declared as all-comprehensive to decide all matters pertaining to the welfare of the people, even overriding the secondary ordinances, if necessary. However, investing this deputed absolute *wilāya* of the Prophet and the Imams (protected by infallibility [*'isma*] against committing acts of injustices) to the government headed by the jurist (regarded as being in possession of sound belief, knowledge, and character [*'adāla*]) raises the ever present suspicion in the Shī'ite juridical writings about the legitimacy of anyone claiming the absolute, all-powerful authority of the infallible leader during the

occultation.

More indicative of this transformation to all-powerful *wilāyat al-faqīh* was Khumayni's statement (in the same *fatwā*, following the key declaration) that the Islamic "government can unilaterally abrogate legal (*shar'ī*) contracts it has concluded with its own people whenever the contract is contrary to the interest of the country and of Islam." According to this, the government under the "Guardian Jurist" could exercise unrestricted power to abolish matters that have been traditionally part of the *mu'āmalāt* (inter-personal, human-human relationship) section of the jurisprudence in the undefined "interest of the country and Islam." In other words, the constitution that served as the protector of people's sovereignty was virtually brought under the absolute power of the Islamic leadership under the aegis of *wilāyat al-faqīh* — the only entity qualified to define the parameters of the "interest of the country and Islam." The Islamic government, hence, was empowered to:

prevent any act performed as part of one's relationship to God (*'ibādāt*) or otherwise in nature, the fulfillment of which runs counter to the interests of Islam, as long as it continues to be harmful to Islam. For example, it can temporarily forbid the performance of annual pilgrimage (*hajj*), one of the most important duties decreed by God, whenever a pilgrimage is contrary to the welfare of Islam. What is previously being said or is now being said on the subject [of the *wilāyat al-faqīh*] derives from an inadequate knowledge of the *wilāyat-i muṭlaqa* (absolute guardianship).

What was in fact said at that time was that the entire jurisprudence in its classical formulations would be rendered null and void because of the powers that the Islamic government could claim in the interest of the country and Islam.

Khumayni's innovative exposition of *wilāyat al-faqīh* in this *fatwā* was intended to provide solutions to the practical socio-economic problems at the legal-theoretical level by empowering the Majlis which, since the establishment of the Islamic republic, had faced with the fundamental question about the propriety of the Majlis in enactment of the laws for a modern nation-state. Furthermore, it was meant to confer on the Majlis the religious legitimacy to enable the execution of its decisions as being in conformity with the "interests of Islam and society." This was predictably reflected in Khamnei's interpretation of Khumayni's *fatwā* when in its support he declared that the jurist who holds the *wilāyat al-faqīh* should be obeyed because his command is "the command of God, and, it is, therefore, religiously incumbent to obey (*wājibu'l-iṭā'at*) him."³⁷ In addition, Khamnei asserted that the *walī-yi faqīh* was the only source of religious authorization not only for the Majlis but also for all branches of government, and even the constitution of the Islamic Republic "which provides the criteria and framework for all legislation derives its consideration (*i'tibār*) from being accepted and confirmed by the *walī-yi faqīh* . . . The validity of all organs of government depends on the *walī-yi faqīh*. To oppose it [government] is *ḥarām* (prohibited) and a major sin, because it is being instituted by the *walī-yi faqīh*, with the permission of God."³⁸

Such absolute interpretation of the *fatwā* by the then President of

Iran connoted the elevation of the *marja' al-taqlid* (the most learned juridical authority in the Shī'ite community) to the absolute ruler of the Shī'ites whose unrestricted authority and pleasure allowed the governmental institutions to function. However, it also marked the permanent breach between the office of the *marja'*, which also included the limited *wilāya* ("guardianship") traditionally conceived in the jurisprudence, and the virtually unrestricted *wilāya* expounded by Khumayni in his position as one of the *marja'* and promulgated in the modern constitution of Iran.

Such implications became explicit when Khumayni died in 1989, leaving his position as *marja'* to be filled by other leading jurists in the country. But his position as the *walī-yi faqīh*, in theory at least, could not be assumed except by another *marja'* of similar status in learning and piety. To accommodate this vacuum in the constitutionally ratified leadership of the Shī'ite polity the Council of Guardians were forced to abandon a well-established tradition in Shī'ite Islam, namely, the recognition of the juridical excellences of the *mujtahid* before declaring one's allegiance to that authority as the *marja' al-taqlid* and *walī al-faqīh*. There was no provision in the traditionally expounded principle of *wilāyat al-faqīh*, even in its limited form, for a non-*mujtahid* to assume the position of the "Guardian Jurist." It was only through a modern constitutional provision that Hujjatu'l-islam 'Ali Khamnei could be elevated to the position of *āyatullāh*. However, the assumption of the position of *walī-yi faqīh*, similar to the Ayatullah Khumayni without the qualifications required in a *mujtahid*, was not possible without circumventing the well-stated prerequisites.³⁹⁾ This was probably achieved by using the more political, and even Sunni in

connotation,⁴⁰⁾ title of *walī-yi amr-i muslimīn* (the person in whom authority to manage the affairs of the Muslims has been invested) for Ayatullah Khamnei, as the successor to the religious leadership in the Islamic Republic of Iran. Accordingly, whereas traditionally loyalty and devotion to the religious leaders in Shi'ism was always the consequence of one's personal consent, now loyalty to the Ayatullah Khamnei, as the holder of the office of the *walī al-faqīh* is prescribed by the constitution of Iran.

In conclusion, it is probably correct to maintain that the constitutionalization of *wilāyat al-faqīh*, in its broader interpretation, was made possible because of the leadership of the Ayatullah Khamayni, which combined the authority of the *marja' al-taqlīd* and the *walī al-faqīh*. However, after his death, the *wilāyat al-faqīh* has been assumed by the Council of Guardians, who, for political reasons, have restricted it to the political dimension of this position, similar to that assumed by the *walī al-'amr* of the Muslims, while retaining the juridical dimension of it within the jurisdiction of the Council, until further progression in the political history of the Shī'ite community could accommodate another *walī al-muṭlaq* (the absolute guardian) in Iran. Moreover, the present status of the principle of the *wilāyat al-faqīh* underscores the culmination of its gradual particularization in the Iranian Shī'ite context, because it has ceased to be of relevance beyond its geographical boundaries. In all probability, its relevance in Iran has been overshadowed by the complex practical problems faced by the nation confronted by more immediate concerns of reinstating itself as a credible member of the modern international order than being regarded as the hope of "the downtrodden" for the creation of an international Muslim order

under the *wilāyat al-faqīh* (Authority of the Jurist). Nevertheless, the religious experience of the Shī'ites has nurtured uneasiness in the event of injustices inflicted by those in power. As such, it will be hardly surprising to witness another revolution of "the downtrodden" under their religious leaders in the context of messianic aspiration of the Shī'ites for the rule of justice and equity on earth.

NOTES

- 1) In this paper I have rendered *wilāya* or *wilāyat* in its broader sense of "authority" whose possession enables a person to assume a position of responsibility and confers on him the right to demand obedience depending on legal-rational circumstances. However, it also signifies "guardianship" in which it is used in the juridical texts where it entitles a person in the position of a "guardian (*wali*)" to the custody of the person or property (or both) of a minor, an insane, or other person legally incapable of managing his own affairs.
- 2) In my study, "Activist Shi'ism in Iran, Iraq, and Lebanon," in *Fundamentalisms Observed* (Chicago: University of Chicago Press, 1991), pp. 403-456, I have discussed in great detail the Shī'ite ideology and its implications for activist radicalism or quietist authoritarianism of the Shī'ite movements in Islamic history.
- 3) Bernard Lewis, *The Political Language of Islam* (Chicago: University of Chicago Press, 1988), Chapter 5, discusses the language that was developed by the radical and quietist responses to injustices in the Muslim polity.
- 4) In *The Just Ruler in Shī'ite Islam: The Comprehensive Authority of the Jurist in the Imamite Jurisprudence* (New York: Oxford University Press, 1988), I have related the theological doctrines to the juridical development in the Shī'ite jurisprudence.
- 5) This is also the beginning of *tashayyu'*, meaning Shi'ism in its early sense of loyalty to 'Alī b. Abī Ṭālib. 'Alīd-loyalism is M.G.S. Hodgson's term to describe

this earlier form of Shi'ism (*Venture of Islam* [Chicago: University of Chicago Press, 1974], Vol. I, p. 260.). It also marks the belief in 'Alī being denied a legitimate claim to succession as the head of the Muslim community.

- 6) The situation led to the murder of the third caliph 'Uthman in A.D. 656 who was regarded by the rebelling Muslims as both personally corrupt and politically unjust. For detailed account of this early predicament in Islamic history see: S.H.M. Jafari, *The Origins and Early Development of Shi'a Islam* (London: Longman Group Ltd., 1981).
- 7) In my monograph entitled: *Islamic Messianism: The Idea of Mahdi in Twelver Shi'ism* (Albany: State University of New York Press, 1981), I have treated the development of this notion in Shi'ism and have shown with much evidence as to how this belief affected the theological-legal formulations in Twelver Shi'ism.
- 8) *Ibid.* In Chapter 2, I discuss the development of "general" deputyship of the Shī'ite jurists as distinct from the "special" one, the distinction being in the form of designation. The former deputyship was based on documentary evidence that purported the general designation of the "transmitter" of the Imam's teachings as the latter's "general deputy."
- 9) The four periods are not as clearly defined and there is overlapping between them, because of the fact that some eminent scholars who dealt with the question of juridical authority were witness to two periods, as I have demonstrated in *The Just Ruler*, Introduction, pp. 3-57. Moreover, it is probably more accurate to identify the four periods with the four regions of the Shī'ite jurisprudence, namely, Baghdad, Hilla, Isfahan, and Rayy-Qumm-Mashhad. However, here I would deal with the development chronologically as the juridical authority evolved during the prolonged occultation and as the fortunes of the Shi'ites took a different turn with the political history of Iran, the Twelver Shī'ite state since the 16th century.
- 10) *The Just Ruler*, pp. 113-117.
- 11) This is the meaning of "divine grace (*lutf*)" in Islamic rational theology, as maintained by the Mu'tazilites and the Shī'ites, where the means of procuring the divine purpose for humanity are elaborated under the rubric of "Necessity

for Prophethood.” According to this doctrine, it is rationally and morally necessary that God, Who wishes humanity to establish an ideal public order embodying the divine will, appoint prophets and the Imams to procure that end on earth. Undoubtedly, inclusion of a just ruler in this category of human agents other than the prophets and Imams is an extrapolation based on the situation of the community living under the de facto Muslim governments. See: Sachedina, *Islamic Messianism*, pp. 122-132 for the primary theological sources on the subject of *lutf*.

- 12) These three requirements in the *mujtahid* are derived from the juridical sources that specify the qualification of those individuals who serve in this official capacity. In Shi'ism sound “belief” implied upholding of the Imamate of the twelve Imams; sound “knowledge” connoted learning acquired from the teachings of the Imams; and sound “character” was the moral probity (*'adāla*) required of all those individuals who served as the leaders of congregational prayers, judges, witnesses, and so on.
- 13) Said Amir Arjomand, *The Turban for the Crown: The Islamic Revolution in Iran* (New York: Oxford University Press, 1988) in Section I, has provided a detailed examination of the rise of the modern state since the pre-modern period of Iranian history; also, Hamid Enayat, *Modern Islamic Political Thought* (Austin: University of Texas Press, 1982), pp. 166ff.
- 14) These have appeared under the title of *al-Hukūmat al-islāmiyya* (Najaf, 1970); English translation of this and other declarations of Ayatullah Khomeini have appeared in Hamid Algar's rendering entitled: *Islam and Revolution: Writings and Declarations of Imam Khomeini* (Berkeley: Mizan Press, 1981).
- 15) The edition I have used in this paper has no date or place of publication. Certainly, the work was published earlier on, soon after the removal of Reza Shah Pahlavi by the Allied Forces, and the installation in his place of his son, the last ruler of the Pahlavi dynasty in 1941. See: Hamid Algar, “Development of the Concept of *Wilāyat-i faqih* since the Islamic Revolution in Iran,” paper presented at London Conference on *Wilayat al-Faqih*, in June, 1988; also, his Introduction to *Islam and Revolution*, p. 41.
- 16) *Kashf-i asrār*, p. 185.

- 17) *Ibid.*
- 18) *Ibid.*, p. 186.
- 19) *Islam and Revolution*, p. 27. The condition in the centers of Shī'ite learning to which Khomeini is referring pertains to the quietist posture adopted by a number of leading *mujtahids*, some of whom also held the position of *marja' al-taqlid*, who had misgivings about assumption of political power by the religious leadership.
- 20) This famous *fatwā* has been widely reported and commented upon in different contexts.
- 21) Algar, "Development of the Concept . . ."
- 22) *Ibid.*
- 23) *Ibid.*
- 24) *Kashf-i asrār*, p. 222.
- 25) *Constitution of the Islamic Republic of Iran*, trans. by Hamid Algar (Berkeley: Mizan Press, 1980), pp. 66ff.
- 26) One of the most profound critiques of the growing chaos and the distribution of power in the period following the constitutionalization of the *wilāyat al-faqh* within Iran was undoubtedly by the late Ayatullah Kazim Shari'at-madari. He believed in equal sharing of power among those who would collectively share the "Guardianship" and would become the Council of Elders, like the justices of the Supreme Court in the United States, instead of all-powerful "Guardianship of the Jurist" that was constitutionalized with Khomeini serving as its personification. See: Shari'at-madari's "Exclusive Interview," in *The Middle East*, January, 1980, following the downfall of Mehdi Bazargan's government.
- 27) This fear was expressed by Shari'at-madari who firmly believed that the only limitation on the absolute authority of the jurist was the recognition of the fact about the people's sovereignty. He saw the role of *wilāyat al-faqh* as the protector of the country's independence by standing loyally by the sovereignty of the people and Islam ("Exclusive Interview," in *The Middle East*, Jan. 1980, p. 33).
- 28) There were others outside Iran who undertook to evaluate Khomeini's earlier opinions on the subject critically and even offered their own interpretation of

the *wilāyat al-faqīh*. See, for instance: Muhammad Jawad Maghniyya, *al-Khumaynī wa dawlat al-islāmiyya* (Beirut, 1979), who undertook to challenge Khumayni's conclusions that limit the *wilāya* to the jurists. Muhammad Baqir Sadr also undertook to elaborate on the principle in his lectures entitled: *Islam yaqūdu al-hayāt* (Tehran, 1983). Ayatullah Muntazari's three volume work, *Wilāyat al-faqīh wa fiqh al-dawlat al-islāmiyya* (Qumm, 1408 A.H./1988), is a detailed study to reiterate the official Khumayni line on the authority of the jurist, tracing it back to the Prophet through textual study and relating it to the conception of leadership and government in Islamic juridical thought.

- 29) Algar, "Development of the Concept . . ."
- 30) See Abdul-Hadi Hairi, *Shi'ism and Constitutionalism in Iran* (Leiden: E. J. Brill, 1977), for a discussion on the problem of human prerogative to legislation among the jurists during the Constitutional Revolution of 1907; also, Arjomand, *The Turban for the Crown*, pp. 50 ff.
- 31) It is interesting to note that the critique of the absolute claim to government authority in a modern state at the expense of people's right to sovereignty by the jurist offered by the Nihdat-i Azadi-yi Iran in their publication entitled, *Wilāyat-i muṭlaqa-yi faqīh* (Tehran, 1368 Sh./1989), seems to be suggesting rather anachronisitically that the divine law is timeless and all-comprehensive to be tampered with by any suggestion (as done by Khumayni's introduction to his *fatwā*) that it does not have solutions to all human problems faced in a modern society.
- 32) I have cited Algar's translation of this, with minor changes, as it appears in his, "Development of the Concept . . ."
- 33) These ordinances are derived by virtue of the occurrence of the primary ordinances, without which such derivations would be impossible. Thus, the existence of the prophet, the divine order, religious leadership, are primary ordinances on the strength of which secondary ordinances like performance of religious duties depend.
- 34) That is, consequences of the view that the Islamic government can act only within the framework of existing ordinances of the Shari'a.
- 35) Here by *māliyat* obviously non-Shar'i taxes are meant.

- 36) *Islamic Messianism*, p. 6.
- 37) As cited by Algar, "Development of the Concept . . ." Khamnei, the President of Iran at this time held the title of *ḥujjatu'l-islām*, and was not as yet elevated to his present position as the *āyatullāh* and the *walī-yi amr-i muslimīn* (the authority invested with the power of guardianship over the Muslim affairs).
- 38) *Ibid.*
- 39) These prerequisites are well documented even in Khumayni's *Kashf-i asrār* and his Najaf Lectures.
- 40) The Sunnite de facto rulers were regarded as such by the Sunnite jurists.

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