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# Chapter 5: The Concept of Absolute Guardianship of the Jurist [Wilayat al-Faqih al Mutlaqah]

The proofs we have presented in the previous chapter substantiating *wilayat al-faqih* testify to the idea of absoluteness of *wilayat al-faqih* and this entails that the *faqih* enjoys all the prerogatives which the infallible Imam ('a) as the holder of authority of the Islamic society has. According to this perspective, the prerogatives of *wali al-faqih* are not limited unless there is evidence that some of the prerogatives of the infallible Imam ('a) have not been given to the *wali al-faqih* as in the case of the issue of the initial *jihad*.

According to the famous view of the Shi'ah *fuqaha*, the announcement of the initial *jihad* 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 *faqih* and that of the Prophet (S) and the infallible Imams ('a). This idea corresponds with what is called "absolute guardianship of the jurist" [*wilayat al-faqih al-mutlaqah*]. The founder of the Islamic Republic, Harrat Imam Khomeini used to say: "The guardianship of the *faqih* is the guardianship of the Messenger of Allah (S) itself."

#### **Absolute Guardianship**

One of the doubts which is sometimes raised against the principle of *wilayat al-faqih* in general and against the term "absolute" [*mutlaq*] in particular is that *wilayat al-faqih* and in particular, *wilayat al-faqih* al-mutlaqah [absolute guardianship of the jurist] corresponds with despotic government and *wilayat al-faqih al-mutlaqah* is identical to dictatorship.

That is, when *faqih* 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 based on the will of the people, and fascism which is founded on someone's whims and caprice. "Consequently, when *wilayat al-faqih* 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 neither 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. Wilayat al-faqih belongs to this third category and it is, therefore, not a fascist government.

Given this explanation, it is very clear that the claim that *wilayat al-faqih* means that the *faqih* 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" [*mutlaq*] 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 *taghut*. Let us elaborate on this point. Prior to the victory of the Islamic Revolution and during the reign of the *taghut*, which was a period of strangulation, owing to the limitations imposed on Shi'ah *fuqaha*, 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 *fuqaha* to ask them about things like marriage, divorce, pious endowment [*waqf*] and some legal disputes and affairs while the *fuqaha* on their part used to answer them according to their guardianship. As we have indicated, the *fuqaha*'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 them by God, the Exalted, and the infallible Imams (*'a*).

With the victory of the Islamic Revolution in Iran and the setting up of the Islamic government by Imam Khomeini (*r*), the ground for exercising comprehensive authority by Shi'ah *fuqaha* was paved, and the late Imam had the opportunity and power as the *faqih* at the highest post in government to exercise authority in all that comes within the jurisdiction of the *wali al-faqih*.

During this time, the *faqih* 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 *taghuti* 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 *taghut*, 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 *faqih* 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 Imam ('a) in this particular case.

That is, we should not say that the *faqih* cannot exercise certain rights and prerogatives, in spite of their being necessary for governance because they belong only to the infallible Imam (*'a*) or that only the infallible Imam (*'a*) can exercise them when he gains authority and so the *faqih* 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 Imam ('a) and the *wali al-faqih* in this respect, and if we set any limitation for the *faqih*'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 *faqih*, like the infallible Imam (*'a*), 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 it is, like the previous point, 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 *wali al–faqih* confined to necessary and urgent cases or can the *faqih* 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, wali al-faqih, 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 *faqih* 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 *faqih* means that the scope of prerogatives and guardianship of the *faqih* 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 *wali al-faqih* 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 *wilayat al-faqih* and in particular, *wilayat al-faqih al-mutlaqah*, does not mean that, without taking into consideration any standard, the *faqih* 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 *wali al–faqih* 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 *faqih* is Islamic laws ensuring welfare for society and seeking the good pleasure of God, the Exalted, and it must be so. If the *wali al–faqih* 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 *faqih* is actually the guardianship of law because he is obliged to act within the bounds of Islamic law and he has no right to circumvent them. This is the way that the Prophet (S) and the infallible Imams ('a) followed. As such, instead of the term *wilayat al-faqih*, 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 Islamic law. Also, we should not forget that we pointed out in chapter 4 that among the qualifications of the *wali al-faqih* 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 *wali al-faqih* does whatever he likes and imposes his inclinations on others has become more vivid. In fact, it must be said that the just *wali al-faqih* 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 *'ulama'* insert lies about this theory in some of their words and writings.

They say, for example, that *wilayah al-faqih al-mutlaqah* means that the *faqih* has authority over everything; he can even modify and deny *tawhid* [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 dare say so.

The primary task of the *faqih* is the preservation of Islam; so, would there be Islam without *tawhid*? 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 *faqih* 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 *faqih* may sacrifice what is important for the sake of what is more important. For instance, if performing *Hajj* pilgrimage has harmful effects on the Islamic society, the *faqih* has the right to order people not to go to *Hajj*.

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 *faqih* 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 *faqih* but also the commander designated by him can give such an order whenever necessary. Yet, all these cases are different from supposing that the *faqih* says that there is no more *Hajj* pilgrimage in Islam; there are no more daily obligatory prayers or to say that Islam has no *Hajj* pilgrimage and prayer at all." What takes place in these cases is that the *faqih* 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 Shi'ah *fuqaha* 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 [ghasb] which is haram—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 religious law. In the example of *Hajj* pilgrimage and prayer, the criterion of the *faqih*'s issuance of the decree of temporary suspension of *Hajj* or the decree of delaying the performance of prayer is the same, and the *faqih* 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 *wilayah al–faqih al–mutlaqah* 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.

#### Wilayat al-faqih 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 *wilayat al-faqih* 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 wilayat al-faqih act into line with the Constitution, or go beyond it?
- Is wilayat al-fagih above the Constitution?
- Does the Constitution preside over *wilayat al-faqih*, or does *wilayat al-faqih* preside over the Constitution?
- Can the wali al-faqih transgress the duties and prerogatives set for him by the Constitution?

- Is wilayat al-faqih above the codified Constitution, or is the Constitution above wilayat al-faqih?
- Are the prerogatives of the *wali al-faqih* 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 *wilayat al-faqih* 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, that we 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 *wilayat al-faqih* is governed by no law or order, and that to be above the law means that the *wali al-faqih* himself is the law and can do whatever he likes and no law can restrain him and that the absoluteness of *wilayat al-faqih* means that the *wali al-faqih* 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 *wali al-faqih* 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 *faqih* is the implementation of Islamic law. If the *faqih* intentionally acts at any time contrary to the laws of Islam and the expediency of Islamic society, he will be spontaneously removed from the post of guardianship and leadership. In Islam we do not have a *wali al-faqih* 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 which 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 *taghut*, 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 *wali al-faqih* and in our opinion the *wali al-faqih* is someone who has been designated in a sense by the Imam of the Age ('a) who, in turn, has been designated by God. Just as the Imam ('a) said in the *maqbulah* of 'Umar ibn Hanzalah, rejection of the ruling of the *wali al-faqih* is tantamount to rejection of the ruling of the infallible Imam ('a), and rejection of the ruling of the infallible Imam ('a) is tantamount to the rejection of the ruling of God and if it was otherwise and the signature and approval of the *wali al-faqih* 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 *wali al–faqih* has bestowed it legitimacy. It is due to support of the *wali al–faqih* that the Constitution has legitimacy and it is not that the Constitution has lent credibility and integrity to the *wali al–faqih*. We pointed out earlier that the *wali al–faqih* 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 Imam of the Age ('a).

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 *wali al–faqih*'s exercising of authority and guardianship is ascribed to the permission granted to him by God, the Exalted, and the Imam of the Age ('a), and not through the prerogative that the Constitution gives him because the Constitution itself acquires its legitimacy and credibility from the *wali al–faqih*.

Now, from what we have said so far, it is clear that the *wali al-faqih* 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 *wali al-faqih* 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 *wali al-faqih* which are usually required is enumerated.

It can also be said that in reality, they represent the literal duties and prerogatives of the *wali al-faqih* "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 *wali al-faqih* 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 *wilayat al-faqih* as reflected in the text of the Constitution is that the duties and prerogatives of the *wali al-faqih* 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 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 *wali al-faqih* 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 *wali al-faqih* may take necessary measures on the basis of the absolute guardianship he possesses.

Also, in the practices of Ha®rat Imam Khomeini (*r*) there are examples which indicate that the authority of *wilayat al-faqih* 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 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 *wali al-faqih*, but Ha®rat Imam (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, Imam Khomeini (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 Ha®rat Imam (r). Regarding the Office of the President, it has been stipulated in the Constitution that the Supreme Leader is to confirm [tanfidh] 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, Imam Khomeini (*r*) wrote in the decree pertaining to the President's assumption of office: "I hereby designate [*nasb*] him."2

This act of the Imam 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, Harat Imam (r) theoretically upheld the absolute guardianship of the faqih, in the sense that within the framework and bounds of the sacred law of Islam and its standards and in accordance with the expediency of the Islamic society, the faqih 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 *wilayat al–faqih* bespeak of its absoluteness. Besides, there is no Qur'anic verse, tradition, proof, or evidence which substantiates that the idea of *wilayat al–faqih* is considered only within the framework of the Constitution or enacted laws.

#### Marja'iyyah and wilayat al-faqih

One of the questions raised about the theory of *wilayat al-faqih* is: What is the status of the other *maraji*' *at-taqlid* and *mujtahidun* other than the *wali al-faqih* in the political system based on *wilayat al-faqih*? In the case of the existence of *wali al-faqih*, on one hand, and *maraji*' *at-taqlid*, on the other, will there happen any contradiction between them? Will the acceptance of the theory of *wilayat al-faqih* necessitate the acknowledgment of a single religious authority [*marja'iyyah*] and the negation of other *maraji*' *at-taqlid*?

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 *wali al-faqih* in the society, what, in case there is difference of opinion between the *wali al-faqih*, on one hand, and the *maraji' at-taqlid*, on the other, will happen to the society and will the duty of the *muqallidin* [followers] of those *maraji' at-taqlid* be? Can one act according to the religious edicts [fatawa] of maraji' at-taqlid as well as the decrees of the *wali al-faqih*?

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 *wilayat al-faqih*. By clarifying this relationship, the reply to these questions and other similar questions will be clear.

In elucidating the relationship between *marja'iyyah* and *wilayat al-faqih*, it is necessary to see what the nature of *taqlid*, function of the *'ulama'* and *maraji' at-taqlid* and function of *wali al-faqih* are so that the difference between the two and the difference between decree [hukm] and edict [fatwa] may be clarified.

In stating the nature of the issue of *taqlid* and function of the *'ulama'* and the *maraji' at-taqlid*, we notice that the people's referring to *'ulama'* 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 'ulama' and maraji' attaglid whose views are guidelines for people to follow.

So, *ijtihad*, in reality, means expertise and competence in religious issues while *taqlid* 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* 'at–taqlid is to show what an expert's opinion is. This is the true nature of *taglid*.

Meanwhile, the issue of *wilayat al-faqih* is distinct from the issue of *taqlid* for it belongs to another realm. What is at stake here is governance and administering the affairs of society. *Wilayat al-faqih* 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 *wali al-faqih* and the offices, organizations and institutions in the system based on *wilayat al-faqih* 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 *wali al-faqih* 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 *wali al-faqih* and the difference between each of them, we can expound the nature of each of religious edict [*fatwa*] and ruling or decree [*hukm*] and the difference between the two. A *mujtahid* and *marja* at taglid's duty is issuing *fatwa*.

As an expert and knowledgeable person in religious matters, the *marja'* at–taqlid explains to us, for example, how we should pray or how we should fast. Therefore, *fatwa* is the view shown by *marja'* at–taqlid about general issues and Islamic precepts. In other words, the task of the *marja'* at–taqlid, like any other expert, is to guide and enlighten others, and he has no apparatus which 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'* at–taqlid.

What we ask the *marja'* at–taqlid about is something like: "What is your opinion regarding this case?" But in the case of the *wali al–faqih* things are different. What we ask the *wali al–faqih* about is something like: "What do you give order?" That is, the task of *wali al–faqih* is not to issue a religious edict but to give a *hukm* [decree]. *Hukm* refers to the order released by the *wali al–faqih* as the religious ruler [hakim ash–shar'i] on social issues and particular cases.

In other words, the *fatawa* [religious edicts] of the *marja*' *at–taqlid* 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*' *at–taqlid* issues a religious edict stating that this general label, i.e. wine is *haram* 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' at-taqlid. 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 faqih in determining the point does not have authority." In principle, it is not the duty of the faqih 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 haram while drinking fruit juice is halal." Every muqallid has to determine for himself or herself in such cases—whether the liquid he sees is wine or fruit juice.

Or, for instance, the *faqih* 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* ' *at–taqlid* 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 [muqallidin] themselves. The wali al-faqih, 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 *wali al-faqih* is only to state decrees or rulings [*ahkam*] 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 *wali al-faqih* 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" [ahkam-e hukumati] or "guardianship decrees" [ahkam-e wilayati], which also indicates the difference between fatwa and hukm. It is necessary at this juncture to note that it is very common that both the fatwa and opinion of a mujtahid about a certain issue are called hukm, and we say, for example, "This is the hukm of prayer" or "This is the hukm of hijab [Islamic dress code]. Yet, we should know that the word "hukm" in such cases is another thing with different connotation, and it must not be mistaken with the term "hukm" which we use in relation to the wali al-fagih.

From what we have said so far, it has become clear that since the reference to the *mujtahid* and *marja*' at–taqlid 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 taqlid and fatwa 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 maraji' at–taqlid 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 *wilayat al–faqih*, this single authority is the ruling *wali al–faqih* and to obey him is incumbent upon everybody including the other *fuqaha*. As *maraji*' *at–taqlid* and *fuqaha* themselves have declared and written in their juristic discussions, if a religious authority [*hakim ash–shar'i*] gives a ruling, no other *faqih* has the right to contradict it.

One of the famous examples which we mentioned earlier is the tobacco controversy and the *hukm* of the late Mirza Shirazi. When he declared, "Today, the use of tobacco is unlawful [*haram*] and tantamount to war against the Imam of the Age ('a)," everybody including the other 'ulama', maraji' at–taqlid and fuqaha regarded themselves bound to observe it because this act of the later Mirza Shirazi was not fatwa–giving or expression of a juristic opinion but an issuance of a "guardianship decree" [hukm–e wilayati].

In sum, what we have said so far regarding the nature of the function of *marja'* at–taqlid and that of the wali al–faqih, and the difference between the two is that one of the differences between the marja' at–taqlid and the wali al–faqih 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 *wali al-faqih*, however, is to issue orders and make decision suitable to specific social needs and conditions. In another perspective, the difference between *marja* 'at-taqlid and wali al-faqih is that *marja* 'at-taqlid is an authority from whom an expert's opinion is asked, and in principle, reference to *mujtahid* and *marja* 'at-taqlid is the same as reference of an inexperienced to an expert while, the *wali al-faqih* is asked this question, "What is your decision and order?" In other words, the function of the former is to issue *fatwa* while that of the latter is to give orders and make decisions.

The other point is that there have been so many *fuqaha* and *maraji* 'at-taqlid' and the emulation [taqlid] 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 *faqih* who acts as the ruler [hakim] and guardian of the affair [wali 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' at-taqlid*) and *wilayat al-amr* (being the *wali al-faqih*), in essence, it is not necessary that the *faqih* who is to govern and assume the *wilayah* will be *marja' at-taqlid* 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' at-taqlid* and have emulators [*muqallidin*]. It is necessary that the *wali al-faqih* enjoys the chaacteristic of being a *faqih* and expert in identifying Islamic injunctions and in exercising *ijtihad* about them. Of course, in practice it is possible that prior to his being recognized as *wali al-faqih*, he may be *marja' at-taqlid* and has *muqallidin*, or he may be a *marja' at-taqlid* who is followed by the majority of the people.

Such was the case of the founder of the Islamic Republic of Iran, Harat Imam Khomeini (*r*). But it is also possible that, as in the time of the late Ayatullah Gulpaygania or Ayatullah Araki,4 the possession of *marja'iyyah* and *wilayah* 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 *wali al-faqih*) concerning decisions, social issues and determining the ruling of particular cases.

## 'Guardianship of the Jurist'or 'Guardianship of the Most Qualified Jurist'?

### 'Guardianship of the Jurist' [wilayat al-faqih] or 'Guardianship of the Most Qualified Jurist' [wilayat 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 [faqih] 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 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 *fuqaha* and *mujtahidin*. That is, all of them are capable of exercising *ijtihad* 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 a'lam" [not a'lam]. The common opinion of the fuqaha and mujtahidin is that it is obligatory to follow the most knowledgeable [a'lam] while it is not permissible to follow or refer to ghayr a'lam.

Now, in view of the explanation above, the question raised in our discussion is: Should the *wali al-faqih* 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 [afqih], or does the *wali al-faqih* not need to have such a condition and all that he needs is to possess the expertise in exercising *ijtihad*?

The reply to this question is that we have to bear in mind that, as we have mentioned in discussing the proofs supporting *wilayat al-faqih*, apart from having the knowledge about Islamic jurisprudence, the *wali al-faqih* must possess two other important qualities, i.e. God-wariness [*taqwa*] 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 *wali al-faqih*, 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 *wali al-faqih* 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 *wali al-faqih*. 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 t has to be higher than anybody else.

Having stated this, if, for example, a certain person is a *faqih* and also expert in managing the society but impious, or he is a *faqih* 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 *wilayat al-faqih* even if he is the most knowledgeable [*a'lam*] and leading *faqih* 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 *faqih* or the most knowledgeable *faqih* can be posed and answered under the following three assumptions:

- 1. The first assumption is to have a person ahead of all the existing *fuqaha* in exercising *ijtihad* 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 *wilayat al-faqih*, 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 *fuqaha* and *mujtahidun* 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 *wilayat al-fagih*.

At this juncture and at the end of this section, it is not out of place to discuss whether or not necessary for the *wali al-faqih* to have competence in the rest of proficiencies. Let us elaborate. In discussing the proofs supporting *wilayat al-faqih* 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 *wilayat al-faqih*, 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 *wali al-faqih* 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 *wali al-faqih*'s enjoyment of the three mentioned conditions lies in the fact that the basic and fundamental raison d'être of *wilayat al-faqih* 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 *wilayat al-faqih* 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 is able to manage the society (inefficiency 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 *wilayat al–faqih* 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 (a).

It is common everywhere that different advisers and consultants play a pivotal role in decision–making and formulating various policies. In the *wilayat al-faqih* 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 *wali al-faqih*.

- 1. Time of the Inghit: the monarchial period in Iran, in general, and in particular, the Pahlavi dynasty which ended in February 1979 with the triumph of the Islamic Revolution. [Trans.]
- 2. Tarrfeh-ye Nr, vol. 15, p. 76.
- 3. Eyatulleh al-'Ueme Sayyid Mueammad Riee Gulpeygene (1899–1993): a contemporary of Imem Khomeine, marja' attaqled for 32 years and teacher at the Theological Seminary [Eawzah al-'ilmiyyah] in Qum for about 72 years. Here, "the time of the late Eyatulleh Gulpeygene" specifically refers to the short period beginning with the assumption of Eyatulleh Sayyid 'Ale Khemene'e to the office of wileyah al-faqeh in early June 1989 up to the demise of Eyatulleh Gulpeygene on December 9, 1993. [Trans.]
- 4. Tyatull hal-'Utme Shaykh Mutammad 'Alt Artke (d. 1994): a contemporary of Imtm Khomein and a marja' attaqled for many decades. Here, "the time of the late... Tyatull h Artke" specifically refers to the short period beginning with the assumption of Tyatull has Sayyid 'Alt Khemene's to the office of will halfaqth in early June 1989 up to the demise of Tyatull has no November 29, 1994. [Trans.]

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