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Chapter 6: The Assembly of Experts and Wilayat al-Faqih

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

Why the Assembly of Experts?

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

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

Perhaps the most important of them, the acceptance of which is possibly easier and has a relatively logical basis are the following assumptions:

- (1) selection by people's direct vote and general elections;
- (2) selection by the Assembly of Experts; and

(3) nomination by the preceding wali al-faqih and Supreme Leader.

Among the three options, the first two are given special attention in the discussions and discourses.

At any rate, in our opinion, clarifying the degree of credibility and value of each of these three views and the topics pertinent to them helps to examine and comment on the other views and there will be no need for us to criticize and analyze the other views. At the outset, it is worth noticing that in discussing the status of the people's vote in the theory of *wilayat al-faqih* (Chapter 3), we pointed out that regarding the legitimacy of the *wali al-faqih*, we advocated the theory of 'discovery' [*kashf*] which we have previously discussed lengthily before. In discussing some of the subjects of this chapter, we shall also adhere to this very approach.

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

Suppose we wanted to choose the best professor of mathematics in the country and give him a special award. This question will arise: What is the logical and correct way of achieving this goal? For recognizing and selecting the outstanding national professor of mathematics, shall we roam around the city, and ask all the strata of people ranging from the jewelry shopkeeper, street cleaner, carpet vendor, and bus driver to the housewife, farmer, student, and medical specialist, to see what their opinion is concerning who the most outstanding and the best mathematics professor in the country is? It is very obvious that in the first place, this method is unscientific and inappropriate, and the result of this survey, whatever it is, is devoid of any credibility and value.

Secondly, in essence, if there are sensible and fair individuals among those who are asked, they will say that the issue is beyond them and they are not worthy to give opinion in that matter. In any case, there is no doubt that in selecting the most outstanding professor of mathematics in the country, no one will apply this method, and if anyone does, the result will be unsatisfactory and rejected.

It is natural that the one who wants to assess the potential and expertise of the professor of mathematics should be well versed in mathematics and belongs to this field. In cases similar to this only relevant authorities and experts can judge. In this case, for instance, initially, in every university professors of mathematics can select the best professor from among themselves.

If there is more than one university in a city, the selected professors of the universities of that city can select the best one from among themselves. Then, at provincial level, the selected professors of the cities will meet and select the best one from among themselves. For example, thirty professors from thirty provinces will be introduced as the best, and again, they will exchange ideas and finally select the model professor in the country from among themselves.

Of course, it is also possible that in this phase or the earlier phases, a committee of judges composed of a number of outstanding professors of mathematics will do the selection, or there will be some slight differences in applying this method. In any case, there is a single general method for all the cases and that is, the expert and authorities on mathematics are to play the pivotal and crucial role in selecting the model professor of mathematics of the country.

In selecting the model professor of mathematics of the country, is this method really the reasonable one, or the one in which all the people, illiterate and literate, from university and who are not at university, expert and non-expert, and in sum, every stratum gather together and give their opinion as to who the model professor of mathematics is?

For identifying the *wali al-faqih*, we have to select the model and superior *faqih*—the *faqih* who is most meritorious and best of all the *fuqaha* as far as the three qualities of knowledge in Islamic jurisprudence, God-wariness and efficiency in managing the society are concerned.

The question is: What is the way of choosing such a *faqih*? Who is worthy to decide on the best and most meritorious *faqih*? Which is correct and logical to hold public referendum and ask the opinion of the people by conducting a national election or to refer to the concerned authorities; namely, the *fuqaha*, and ask them to select the most outstanding person from among themselves to assume this office? If, in selecting the model professor of mathematics in the country, referring to the public opinion and holding elections is not considered correct (and it is indeed incorrect) and that the professors of mathematics in the country must give their opinion in this regard, then for selecting the model *faqih*, the rational and correct way is to entrust the responsibility of selecting the most meritorious *faqih* to the *fuqaha*, and so referring to the people and direct vote of the people on this issue cannot be dependable.

What is stipulated in the present Constitution of the Islamic Republic of Iran is that selecting the Supreme Leader and the *wali al-faqih* lies on the shoulder of the Assembly of Experts—experts all of whom are *fuqaha* and *mujtahidun* who have their life to studying Islamic jurisprudence.

These experts who want to finally choose the *wali al–faqih* can be selected in two ways. One is that in every city where there are a number of *fuqaha*, one of the most qualified is selected from among themselves and in the second phase at the provincial level the same is done and in the end, a limited number of them will be selected for the Assembly of Experts.

The other way is that in every province or city, these individuals are identified through public elections. Since the number of the *fuqaha* and *mujtahidin* is usually limited and sometimes in a city there is not a single *faqih* or *mujtahid*, it is sensible that the people, who themselves are not experts in Islamic jurisprudence and *ijtihad* and those number in every city or every province is limited, will do some research and investigation to decide who is or are more meritorious than the rest.

Similarly, if we want to find out the best physician of heart diseases in a city or a province, we, who ourselves are not specialized in medicine, can make a right decision by referring to the doctors and specialists as well as by asking the patients who have consulted them.

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

Concerning the way of nominating the *wali al-faqih* by the previous Supreme Leader, it is worth noticing that although in practice this way ensures a relatively high certainly and leads to a proper and desirable nomination because of the previous leader's knowledge and insight with respect to the prominent academic and political figures and individuals of the country and their capabilities, the previous *wali al-faqih* can, with some reflection and contemplation, identify the most meritorious one from among the most prominent *fugaha* and introduce him to the people.

However, using this way can pose two serious problems. First, it gives way to the sinister and nefarious propaganda of the enemies to influence the people inside and outside the country by depicting the *wilayat al-faqih* system as a despotic regime while accusing the Islamic government of dictatorship.

Nowadays, we notice how, in spite of the twenty public elections held over the past twenty years following the Islamic Revolution, the enemies and some thinkers both inside and outside the country spitefully and deceitfully accuse the Islamic Republic system of being a form of dictatorship and despotism.

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

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

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

The problem of circularity

It has become clear so far that the logical and justifiable way of selecting the Supreme Leader and *wali al-faqih* is referring to the opinion and view of the experts. There are some questions about the

Assembly of Experts and its relationship with the *wali al-faqih* and Supreme Leader, one of which is the problem of circularity 1 allegedly pertaining to the relationship between the Assembly of Experts and the Supreme Leader.

It is claimed that on one hand, the Assembly of Experts designates the Supreme Leader and on the other hand, the credibility of this assembly and its function are dependent on the Supreme Leader's approval, and this is nothing but a circular argument which is a false claim. Let us elaborate. The qualification of those who want to be candidates and finally be elected to the Assembly of Experts has to be approved by the Council of Guardians.

Therefore, the members of the Assembly of Experts' credibility is determined by the Council of Guardians and if their credibility is not confirmed by the Council of Guardians, the great number of votes in the ballot boxes they garner will not be a criterion for their credibility and membership to the assembly. Meanwhile, the members of the Council of Guardians have obtained credibility through the approval of the Supreme Leader because, as stipulated in the Constitution, the selection of the jurists to the Council of Guardians is the *wali al-faqih*'s prerogative. Therefore, the reason why the views of the Council of Guardians are credible and binding is because its members are selected by the Supreme Leader.

Given this, we can say that if the credibility of the members of the Assembly of Experts depends on the approval of the Council of Guardians and the credibility of the Council of Guardians, in turn, depends on the approval of the Supreme Leader, it follows that the credibility of the Assembly of Experts depends on the approval of the Supreme Leader through a single intermediary. And it is the Supreme Leader and wali al-fagih who lends credibility to the Assembly of Experts and its performance:

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

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

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

them acquire credibility:

Here, this question arises: During the establishment of a democratic system and, when the first election is intended to be held, when there are no parliament and cabinet and when a decision is made to establish them through the said election, this election itself necessitates a set of rules and regulations such as whether or not the women have also the right to vote, the minimum age of the voters, the minimum vote of the candidate, whether the rule will be absolute majority, relative majority, 50% plus 1, or one–third of the vote.

Also, for the age, level of education and other cases, the required qualifications of the candidate and tens of other issues, there should be certain rules and regulations. It is crystal clear that each of these rules, regulations and decisions about the conduct of election has its effect on the outcome of the election in determining which candidate or party will garner more votes. In the Western countries (or in most of them) which are considered the forerunners of establishing democratic systems in the past two centuries, at the beginning the women had no right to vote, and did not take part in the elections.

If the women had been given the right to vote, most probably the names of today's individuals, parties and figures of the political history of many Western countries would not have existed. Until recently, in Switzerland which has more than twenty autonomous cantons, 2 the women had no right to vote in many of these cantons. 3 By changing the minimum age of eligible voters from 16 to 15 in countries such as ours where the youth constitute almost 80 percent of the population, there is a strong probability that the state of elections and the individuals and groups eligible to vote will totally change.

Now, the question is: In the first election held by every democratic system when there is no cabinet or legislative body, what will be the authority which determines the age and gender of the voters or the qualifications of the candidates, the percentage of votes they need to win, and other similar cases related to conducting the election? Here, we have to pay attention to the fact that if we fail to make a convincing and correct decision for the first cabinet and first legislative body, all the cabinets and legislative bodies in all countries will be questionable and their credibility and legitimacy will be groundless.

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

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

In an attempt to solve this problem, some theoreticians and political scientists say: "Finally, we have no

option but to hold the first election on the basis of a certain set of rules and regulations." Suppose we held an election on the basis of the following rules and regulations:

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

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

It is very obvious that such answer is not correct and the problem will remain unsolved because our question is about the first cabinet and parliament which are to bestow credibility to the succeeding cabinets and parliaments and their enacted laws.

This is while the first cabinet and parliament have come into existence as a result of an election based on a certain set of rules and regulations which had not been enacted and approved by any popularly–elected cabinet and parliament. This cabinet and parliament which are to bestow credibility to the election through which it has come into being is nothing but the circular relationship to which we have referred at the beginning:

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

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

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

The fallacy in attributing the problem of circularity to the relationship between the *wali al-faqih* and the Assembly of Experts lies in the assumption that the *wali al-faqih* acquires his credibility from the Assembly of Experts whereas the credibility of the Assembly of Experts is acquired by the approval of the *wali al-faqih* through the Council of Guardians whose credibility is also granted by the Supreme Leader. The reply to this fallacy is that the credibility of the *wali al-faqih* is, as we have said, not granted by the Assembly of Experts but through the decree of God, the Exalted, and designation of the infallible Imam (*'a*).

In reality, the role of the Assembly of Experts is not to designate the Supreme Leader but, as we have explained in Chapter 3 of this book, to 'discover' [kashf] the leader appointed by the Imam of the Age ('a) through general designation. Similarly, when, in choosing the marja' at–taqlid and determining the most knowledgeable [a'lam] faqih, we refer to and consult experts and well–informed people, we do not want them to 'designate' a marja' at–taqlid or the most knowledgeable faqih; rather, in reality and actuality the person in question is either mujtahid or not, either the most knowledgeable or not.

If he is indeed a *mujtahid* or a most knowledgeable *faqih* the result of our research will not arbitrarily affect his status. And if he is really not *mujtahid* and *a'lam*, the outcome of our investigation will not render him *mujtahid* and *a'lam*. So, the sole purpose of our consulting the experts is to discover, through their testimony, who the most knowledgeable *mujtahid* is (a thing which exists in reality prior to our inquiry).

The same is true of the Assembly of Experts whose duty is not to designate the *wali al-faqih* to the Supreme Leadership but to merely bear testimony which *mujtahid* has, according to the decree of the Imam of the Age ('a), the right to govern and whose command has to be obeyed.

The other reply, i.e. the third reply, is that the founder of the Islamic Republic of Iran, Ha \mathbb{T} rat Imam Khomeini ('a), for example, set up the Council of Guardians for the first time and the said Council confirmed the qualification of the candidates who were elected to the Assembly of Experts, but the task of this Assembly of Experts is to choose the *next* Supreme Leader. Therefore, this process does not undergo any circularity.

There would have been circularity if Imam Khomeini (*qs*) had, through an intermediary (Council of Guardians), approved the Assembly of Experts and the Assembly of Experts had designated the Imam to the Supreme Leadership. Similar to this case is when at the beginning we have a lit candle and with this candle we light a matchstick with which we light another candle. This is not considered circularity. There will be circularity if the light of the first candle is taken from the matchstick while the light of the matchstick is taken from the first candle. Naturally, neither the candle nor the matchstick will be lighted.

One may say that originally the leadership of Imam Khomeini (qs) has nothing to do with the Assembly of Experts but the continuation of his leadership depends on the discretion, approval and testimony of the Assembly of Experts.

Therefore, there is no circularity with respect to the beginning of his leadership, but as far as the continuation of his leadership is concerned, the problem of circularity exists. This is because the continuation of his leadership is the outcome of the confirmation of the Assembly of Experts and at the same time the Assembly of Experts enjoys credibility because it has been approved by Imam Khomeini (*qs*).

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

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

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

The experts and types of specialization

One of the questions and objections raised regarding the Assembly of Experts and its members is related to the necessity of their possession of different kinds of specialization. Let us elaborate on the

question. Firstly, the Constitution states that qualifications needed for assuming the Leadership are summarized in three qualifications, i.e. Islamic jurisprudence, justice, and efficiency in managing the society.

But, in view of the qualification of the *ijtihad* of the candidates to the Assembly of Experts stipulated in the text of the Constitution, the members of the Assembly of Experts is composed of a group of individuals who have the capability of determining the *wali al-faqih*'s knowledge of Islamic jurisprudence and justice. As for the *wali al-faqih*'s competence in managing the society which entails having a set of qualities such as administrative power, familiarity with social issues and events, awareness of the current domestic and world politics and the like, the members of this assembly are unable to make decisions.

Therefore, there is a need for some among the Experts who can, with their professional expertise and scientific position in administrative, political and social issues, express their opinion about the Supreme Leader and *wali al-faqih*'s proficiency in management. Secondly, since in accordance with the existing Constitution, such duties and prerogatives as commandership-in-chief of the armed forces and determining the overall policies of the system including the economic, military, political and other fields are assigned to the Supreme Leader, to determine whether the Supreme Leader can discharge these duties or not requires the existence of different experts in military, political, economic, and other affairs among the members of the

Assembly of Experts so that, in addition to determining the *wali al-faqih*'s expertise in Islamic jurisprudence and justice, they may be able to assess the qualifications necessary for becoming a supreme leader and *wali al-faqih*, and give their professional opinions.

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

In reply to this question, we have to state that firstly, for confirming the qualification of the candidates for the Assembly of Experts, the existence of the condition of *ijtihad* alone is not sufficient.

Rather, it is natural that when these candidates are elected to the Assembly of Experts, they can define the Supreme Leader and *wali al-faqih* which is regarded as a sociopolitical position and not merely a religious one, it follows that in addition to the possession of a good command of *ijtihad*, they themselves have to be well acquainted with the sociopolitical issues. And this matter is treated as a key and important criterion for confirming the suitability of the candidates for the Assembly of Experts.

Hence, we should never suppose that the members of the Assembly of Experts are merely an aggregate of God-wary *mujtahidin* who have no expertise at all in politics and social issues, or know nothing about such matters. Rather, they certainly have a considerably acceptable level of familiarity with sociopolitical issues. In addition, we have to bear in mind that the presence in the Assembly of Experts of the

individuals who are merely statesmen and who are not *fuqaha* is exactly like the presence of the individuals who are merely *fuqaha* and who do not have an iota of knowledge about politics.

The objection directed to the presence of the *fuqaha* who lack knowledge about politics and social issues in the Assembly of Experts is also directed to the presence of the politicians who are non-*mujtahid* and have no sufficient knowledge about Islamic jurisprudence. Consequently, the members of the Assembly of Experts must be among the *mujtahidin* who are familiar with the sociopolitical issues of the day.

Secondly, it is true that the three conditions of the *wali al-faqih*, i.e. knowledge of Islamic jurisprudence, justice and efficiency in managing the society have been stipulated in the Constitution, but it is worth noting that having these three conditions on equal terms, is, in our view, not important. Rather, one of them is more important than and takes precedence over the other two. Let us elaborate on it. We believe that what constitutes the fundamental element of our system is Islam.

Also in all other countries, management and politics occupy special position and it is incorrect to assume that the leading figure of any country whose system is not based on Islam not among the administrators and statesmen. So, we have no advantage over the others in this regard. The merit and distinctive feature of our country is that it is governed by an Islamic system. That is, the thing on which we lay emphasis more than anything else and which we consider our main objective in setting up the government and conducting the political affairs is Islam and the spread of its values and laws.

Therefore, the leader, the towering figure of such a system, must have, both in theory and practice, the necessary and enough proximity to, fondness of and commitment to Islam and its laws and values. It is for the same reason that we consider that the leader of this country and this system to be a just *faqih* and we regard his *fiqahat* (being a *faqih*) to have precedence over his *'adalah* (his being just [*'adil*]). Faqih is someone who knows Islam very well and has correct, in–depth and comprehensive knowledge of its teachings and values.

If there is no such a person on top of this system to guide it in line with Islam and supervise the Islamic character of the general trend governing the system and its institutions, the establishment of Islamic government will not be accessible. In fact, the system will turn into a system similar to the current systems of the countries all over the world. The sole objective of such systems is to administer the affairs of society, and according to them, its being of Islamic or non–Islamic nature has no meaning, and of no importance.

Therefore, concerning the *wali al–faqih* and Supreme Leader of the Islamic system, the preeminent condition is his being *faqih* and research–based understanding of Islam and its laws. Determining whether or not the Supreme Leader has this characteristic is very crucial and vital, and so this task is entrusted to those who are experts in this field, i.e. Islamic jurisprudence and *ijtihad*. Of course, as we stated, God–wariness [*taqwa*] and familiarity with politics and social issues of the day by the members of

the Assembly of Experts and by the Supreme Leader himself are important and are taken into account.

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

For making decisions on military, economic, developmental and other affairs, these leaders benefit from groups of reliable and well–informed advisers. The same is true of our Islamic system. What the Supreme Leader personally needs is proficiency in management and high and acceptable capability to understand and comprehend politics.

Of course, we have pointed out that in view of the Islamic character of our system, along with the characteristics that the leaders in the world possess, the *wali al-faqih*'s command over another thing, and that is knowledge of Islamic jurisprudence, in particular and about Islam, in general, is general.

But it is not necessary that the leader himself be an authority on other things and has profound and extensive knowledge of them. In fact, he may benefit from a group of trustworthy advisers who are well-versed in different fields and make use of the prerogatives granted to him to make appropriate decisions.

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

At the conclusion of this section, it is worth noting that sometimes, it is argued that Islam has different branches of science such as exegesis of the Qur'an [tafsir], scholastic theology ['ilm al-kalam], hadith, rijal,4 philosophy, and others. The faqih [scholar of jurisprudence] is referred to as the Islamologist or Islamic scholar while technically, faqahah means familiarity with the secondary laws of Islam and expertise in jurisprudence (as indicated in the books on practical laws [risalah al-'amaliyyah]).

As such, if by *wali al-faqih* and leader of the Islamic system we really mean Islamologist, then it is necessary that in addition to his authority on Islamic jurisprudence [*fiqh*], he must have expertise in different branches of Islamic science such as *tafsir*, *kalam*, *hadith*, philosophy, *rijal*, and the like. This entails that a number of scholars in *tafsir*, *kalam*, philosophy, and others be among the members of the Assembly of Experts so that they may assess whether or not the Supreme Leader has the required prescribed level of expertise in these fields.

The reply to this critical remark is that the thing which affects the implementation of the Islamic system is the authority on Islamic jurisprudence. It is true that Islam has various branches but part of them is relevant to man's esoteric and inner concerns which are referred to as beliefs [i'iqadat]. Another branch

is related to family affairs while yet a number of things like ritual purification [taharah] and impurity [najasah], prayer and fasting is related to devotional issues, acts of worship and personal conduct.

But what has a significant and vital influence on the Leadership of the *wali al-faqih* and on directing the Islamic system is the familiarity with the sociopolitical laws of Islam. The *wali al-faqih* must have a profound understanding in this respect and must surpass others, although *ijtihad* in other secondary issues is also necessary. Of course, the other areas of Islam are also important, and *fiqh* and *fiqahah* in their broad sense also include these branches.

The paradox of discharge

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

For elaborating on this question, we have to state that on one hand, it is stipulated in the Constitution that one of the duties and prerogatives of the Assembly of Experts is to supervise over the activities of the Supreme Leader and discharge him when the Assembly finds that he has lost some or all the necessary qualifications for leadership; for example, if, God forbid, he is found to have committed indecency or a major sin, have strayed from the path of justice and God–wariness [taqwa], have lost the right frame of mind and the power to exercise ijtihad as a result of an ailment or some other reason, or is no longer capable of comprehending and analyzing sociopolitical issues and does not have the ability of managing the society or the competence necessary for the Leader.

On the other hand, it is also possible that one day, the *wali al-faqih* truly discovers that the majority or all of the members of the Assembly of Experts have given in to bribes and threats, or according to some other logical and plausible reasons, he really comes to the conclusion that the existing assembly is incongruous with the interests of Islam and Islamic society and is to the detriment of the people. In this case, by invoking the guardianship he has, the *wali al-faqih* can dissolve the Assembly of Experts even though there is no law which explicitly stipulates that one of the prerogatives of the *wali al-faqih* is "dissolution of the Assembly of Experts".

It is clear that if we encounter only one of the two above cases, there will be no problem. That is, if only the Assembly of Experts discharges the *wali al-faqih*, he will be removed from the said position. Also, if only the Supreme Leader and *wali al-faqih* decides to dissolve the Assembly of Experts, the said

assembly will be dissolved accordingly, and by holding an election, a new Assembly of Experts can come.

But the problem arises if both these decrees are issued simultaneously, and each of the *wali al-faqih* and the Assembly of Experts simultaneously gives a decision on the lack of qualification and credibility of the other. This is the source of the paradox of dismissal, and this is what makes one ask: "What will then the nation and country do?"

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

For example, in the recent years, we have witnessed the dispute between the Russian State Duma (lower house of the national bicameral legislature) and the president of the said country. 5 In many other countries such a problem will possibly arise because of the legal prerogatives which each principal institution and government has.

At any rate, in general, what can be said here is whichever of the Assembly of Experts and the *wali al-faqih* issues a decree ahead of the other, its or his decree will be binding and the decree of the other will not be valid and to assume that these two decrees simultaneously occur is merely hypothetical and very rare and practically, to discuss it is of no avail. As we have said, this phenomenon is probably found in other systems and it is not something which is connected only to the theory of *wilayat al-faqih* and is taken as a point of weakness versus other systems and theories.

However, the important and considerable academic point present in this case is that principally, the Assembly of Experts' duty is announcing the dismissal, and not decreeing it. This is because just as when identifying the Leader and choosing him as the *wali al-faqih* (the question we have explained in Chapter 3), it is now clear that the task of the Assembly of Experts is not "designating" [nasb] the *wali al-faqih*, and it is clear that it is not through the decree of the Assembly of Experts that the *wali al-faqih* becomes eligible and qualified to the post of Supreme Leadership and *wilayat al-faqih*.

Rather, he already had the qualifications and all that the Assembly of Experts does is testifying and identifying the person who enjoys the qualities indicated in the general designation of the Imam of the Age ('a) during the period of major occultation. Also, with respect to the question of discharge, whenever the Leader loses some or all of the necessary qualifications for Leadership and *wilayat al-faqih*, he is automatically discharged from the Leadership and the legitimacy which he enjoys, comes to an end.

Also for this reason, the Assembly of Experts today determines such deviation and lack of qualifications, nevertheless all his decisions, discharges and appointments, acts and orders are all rendered invalid from the time he loses the necessary qualifications. Therefore, just as in the beginning, the task of the Assembly of Experts is to 'discover' and identify the person who enjoys the necessary qualifications, and not to 'designate' him.

At the end too, the task of the Assembly of Experts is merely to 'discover' and determine the lack of the qualifications, and the discharge happens as an automatic effect. In fact, one of the merits and salient features of the theory *wilayat al-faqih* is that as soon as the least defect emerges in the necessary qualifications required for Leadership, the Supreme Leader will be discharged automatically and his credibility and legitimacy come to an end.

This is while today we see even in powerful and known countries in the world such as the United States of America that the president of the country commits a crime and the crime is affirmed by the court and the House of Senate yet, the only effect for his act is that he has to be fined, but as a president he remains in his post.

Not only his previous decisions, works and orders (from the time of performing the crime up to the present) are all regarded as credible and legal and subject to no criticism. Furthermore, this president, whose act of bribery is recognized by every group and assembly, is allowed to rule and use all his legal rights and prerogatives. Now, which one of these two theories is more logical and tenable?

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

- 1. That is, petitio principi (begging the question) or the act of using an idea or a statement to prove something which is then used to prove the idea or statement at the beginning; in short, to use the claim as the proof and vice versa. [Trans.]
- 2. Switzerland is a confederation of 26 states, called cantons. There are 20 full cantons and six half-cantons; the half-cantons were formed when three full cantons were subdivided. The cantons and half-cantons are subdivided into communes (German gemeinde), which are roughly equivalent to counties and number about 3,000. [Trans.]
- <u>3.</u> It was only in 1971 that a referendum granted women the right to vote in federal elections and it was only in 1990 that the same right was eventually extended to all the cantons. Besides, it was only in 1981 that an equal rights amendment to the constitution was approved by referendum. [Trans.]
- 4. Rij® or 'Ilm ar-Rij®: a branch of the science of had®th dealing with the biography of the had®th transmitters or reporters. [Trans.]
- 5. This refers to the then Russian President Boris Yeltsin's decision to dissolve the parliament in September 1993 while armed opposition leaders and conservative deputies occupied the parliament building and refused to disband. The following month, troops loyal to Yeltsin stormed the building and arrested the opposition leaders, leaving more than 100 dead. This settlement reached through the use of force is a consequence of the absence of clear constitutional provisions which delineate the powers and resolve the conflicts between executive and legislature. [Trans.]

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