

Section Two: Period of Occultation

General Objectives

After studying this discourse, students are expected:

1. To know the continuity of the interpretation and practice of religion during this period of occultation;
2. To be acquainted with the characteristics and sources of *ijtihād*; and
3. To know some rational and textual proofs for the guardianship of the jurist [*wilāyah al-faqīh*] and be acquainted with its theoretical dimensions.

Introduction

Since the *Imām* of the Time (*'atfs*) is not present during the period of occultation, flawless interpretation of the religion is naturally not possible and there is deprivation of ideal political leadership. So, the function of religious authority and political leadership of the *Imām* (*'atfs*) is not exercised.

As such, the people will be deprived of the religious authority and political leadership of the infallible *Imām* (*'atfs*) and they have no option but to engage in “waiting”. However, these questions are raised: Has the religion of Islam offered a solution to these two important issues (interpretation and implementation of the religion)? Or, have the *Imāms* (*'a*) shown a way to their *Shāh* during the period of occultation? We shall examine the reply to these related questions in the two succeeding sections on religious authority and political leadership.

Religious authority

Without doubt, flawless interpretation of the religion comes to an end with the occultation of the infallible *Imām* (*'atfs*). During this period, nothing further will be added to the corpus of the *ʿadāth* of the Infallibles (*'a*) and the main religious sources. From the existing religious sources, which include the

traditions of the Infallibles (‘a), the religious duties of the faithful can be inferred such that they have sufficient basis for the performance of duties. However, all people cannot deduce their duties from the religious sources.

Therefore, naturally, they must refer to those who are capable of doing this important task. In this manner, during the occultation of the Imām (‘atfs) the position of intellectual authority is assumed by the ‘ulam— who are well-versed in religious principles and capable of deducing the laws.

Of course, even during the time of the presence of the Imāms (‘a), not all people had the opportunity to consult the Imām of their time. Due to distance, many had become acquainted with their religious duties through local ‘ulam while the latter had greater chances of consulting the Imām of their time. During the period of occultation, however, there is no option but to refer to the ‘ulam’.

The ‘ulam are those who are capable of deducing laws from the religious sources. This capability is technically called *ijtihād* and one who possesses this capability is known as a *mujtahid*.

Of course, in addition to *ijtihād* the intellectual authority has other required qualities such as God-woriness [*taqwā*] and knowledge of the state of affairs of his own time. Hence, the *mujtahid* are the intellectual and religious authorities of the people during the period of occultation. [1](#)

Salient features of *ijtihād*

1. *Non-monopoly*. As defined earlier, *ijtihād* is not a monopoly of a particular social group or class. Anyone with the required intellectual and moral qualities can be the intellectual authority. As such, according to the Shā‘ah, no particular class or stratum of society is presented as the intellectual and religious authority of the people.

2. *Accessibility of *ijtihād**. In the Shā‘ah school of thought, anyone can acquire the competence to exercise *ijtihād* within a specific set of rules. In the Sunnī school of thought, the door of *ijtihād* is closed. [2](#) The Sunnī ‘ulam have to express views within the framework of *ijtihād* viewpoints of a certain number of their great *mujtahid*. According to the Shā‘ah teachings, however, the ‘ulam always have the right to exercise *ijtihād*. Basically, the scholars who are competent to practice *ijtihād* are not obliged to practice *taqlīd*, for they have to act upon their personal *ijtihād*. [3](#) So, it is possible to have different *ijtihāds* and juristic opinions at one time. It is even possible for a *mujtahid* to express diverse opinions over the course of time and recant his former religious edict [*fatwā*].

3. *Ijtihād as rule-based*. *Ijtihād* as a method of understanding the *sharā‘ah* depends on a set of rules. In other words *ijtihād*, which is the process of arriving at a specific understanding of the religion, is considered *ijtihād* only when it is derived through a specified logic. Understanding which is not anchored in technical and systematic *ijtihād* is speculative interpretation [*tafsīr bi’r-rayy*] which is devoid of any value.

Of course, it must be noted that systematic understanding does not always arrive at truth and unambiguous law. For this reason, unlike the understanding of the infallible Imams (‘a), the theory of *ijtihād* is not considered a flawless pillar of the religion. Rather, at most it is an understanding which serves as a proof [*uḥjūh*] for the *mujtahid* and those who emulate him [*muqallidīn*].

Therefore, the concept of “proof” [*uḥjiyyah*] distinguishes *ijtihād* from speculative interpretation [*tafsīr bi’r-rayy*]. Forbidding of speculative interpretation starts exactly from the moment when systematic reasoning is lost. As such, in replying to a juristic question, a *mujtahid* must traverse difficult and tortuous ways. The reason for this is that the *faqīh* does not treat religious laws as facilitators. His aim is to try his best so that his deduction is within the framework of a set of rules and this is the reason for the concern for credibility—so that it may serve as “proof”.

4. *Dynamism of ijtihād*. Since Islam is the final religion, it must be able to offer answers to the problems and predicaments of every age. “Final religion” means that its rules are such that they are applicable in every period. It is true that *ijtihād* is exercised within the framework of specific rules, but it gives the *mujtahidīn* the opportunity to offer answers to the problems of his particular time by referring back to the religious sources.

In the Islamic *shar‘ah*, there are alterable elements which make it possible for laws to be implemented in different areas. Some of these elements are as follows:

a. In the Islamic *shar‘ah*, rules are presented in general form. Since the addressees of the religion are all people in all places, many of the laws are in the form of permanent rules and not confined to a particular time in history. For example, the principle of *pacta sunt servanda*⁴ covers every treaty at every period.

b. In the Islamic *shar‘ah*, apart from the common laws that are implemented in normal conditions, certain laws are considered for special conditions which are called secondary laws [*al-akām ath-thawāniyyah*]. These laws make it possible for the *shar‘ah* to conform to special conditions. For instance, in an emergency situation in which it is not possible to implement a mandatory law, as long as the situation is not normalized, it is not mandatory to implement it. Or, in the case that the implementation of a law causes harm to a person or persons, it must not be implemented.

c. In the Islamic *shar‘ah*, the Islamic state has a credible standing and can issue decrees while taking the society’s welfare into consideration. These decrees or laws which are called “administrative decrees” [*al-Akām al-Hukūmiyyah*] gives the Islamic state the opportunity to implement the Islamic *shar‘ah* based on the welfare of Islam and the Muslims. These decrees are within the prerogatives granted to the Islamic state.

In view of the alterable elements of the Islamic *shar‘ah*, *ijtihād* is a dynamic process compatible with time and place. Therefore, time and place are two fundamental and decisive elements in the practice of *ijtihād*.

It must be noted that many items or objectives assume various forms over the course of time. In consonance with changes, laws may also change accordingly. It is possible for an object to be an instrument of gambling at a certain time and place and not so at another time and place. Or, it is possible that at a certain time to buy and sell an item is not allowed for being devoid of any rational benefit, but the same item may be allowed as a commercial commodity at another time on account of its acquisition of rational utility.

It is worth mentioning that in accordance with the famous view in Shari'ah jurisprudence, persons who are not *mujtahid* (i.e. they are not experts in deducing religious laws) must refer to a living *mujtahid*. The rule of referring to a living *mujtahid* gives the opportunity to the people to always emulate a *mujtahid* who knows the conditions and exigencies of the time and address their needs in accordance with each period.

Therefore, *ijtihad* in the Islamic culture, especially in the Shari'ah conception, has the necessary dynamism in conforming the religious laws to current problems while ensuring that it is within the framework of its conventional rules. While connecting to the religious tradition, it addresses the needs of the changing world.

It must be added that these are the salient features of *ijtihad*. *Ijtihad* is a process which can discharge this responsibility well. However, the absence of answers to some problems in their various dimensions is not an indication of the failure or futility of *ijtihad*. Rather, the reason for this is that sometimes all the potential of *ijtihad* in different areas are not utilized.

Sources of *ijtihad*

For the Shari'ah, *ijtihad* is performed based on the four famous sources, viz. the Qur'an, *Sunnah*, reason [*'aql*], and consensus [*ijma'*]. The Qur'an is the primary source of the religion and it is the basis of deducing religious views.

Along with the Qur'an, since the *Sunnah* serves as the elucidation, explanation and elaboration of the Qur'an, the authentic and credible narrations constitute a vital source, such that without them one cannot content himself with the Qur'an. Many religious laws cannot be inferred by only referring to the Qur'an. In essence, the basic function of the *Sunnah* is to elaborate the subjects concisely mentioned in the Qur'an.

Apart from the Qur'an and the *Sunnah*, which are considered the textual sources of *ijtihad*, the intellect or reason [*'aql*] is presented as one of the sources of deducing laws. Since religion and reason are totally compatible and concordant, definite rational laws are substantiated by religion.⁵

Consensus [*ijma'*] is the fourth source of *ijtihad*. *Ijma'* means the agreement of '*ulam*' on a religious law such that through this agreement, the view of the Infallibles (*'a*) can be inferred. In other words, *ijma'* in

Shar‘ah *ijtihād* is a specific kind of agreement among ‘*ulamā*’ which uncovers the view of the Infallibles (‘*a*) on a particular issue. Therefore, mere consensus of a number of ‘*ulamā*’ and *mujtahidīn* on a religious law cannot be considered credible *ijmā*’ just because it closes the door for other *mujtahidīn*. Rather, this consensus must be such that it establishes its concordance with the pertinent view of the Infallibles (‘*a*).

Hence, Shar‘ah *ijtihād* is practiced only within the framework of these four sources, and the logic of inferring the *shar‘ah* is also put into action within this parameter. Every proof which is claimed to be the basis of understanding the religion has no option but to come from one of these four sources. As such, it becomes clear that:

Firstly, sufficing with only the Qur’an in understanding Islamic law and searching for all the answers in it alone is an exercise in futility and an unacceptable inference.

Secondly, relying on rationalization and personal inferences is acceptable provided only that it is substantiated by definite proof and evidence.

Thirdly, custom or usage is not automatically credible unless it is substantiated by reason or the *Sunnah*. In other words, if a customarily accepted rule is consistent with explicit dictate of reason or because of its persistence from the time of the Imāms (‘*a*) up to the present, meaning that it is evident that it is approved by them, such a rule can be considered a religious rule or decree. Otherwise, it cannot be considered an integral part of the *shar‘ah*.

Leadership

The issue of leadership during the period of occultation can be examined in two perspectives, viz. rational [*‘aqlī*] and textual [*naqlī*]. Here, we shall discuss them separately as “rational proof” and “textual proof”:

1. Rational proof

The rational approach to the issue of leadership is based on the following preliminary points:

1. From the Shar‘ah viewpoint, during the presence of the Imāms (‘*a*) the leadership of the Islamic *ummah* rested on the shoulders of the infallible Imāms and the religious laws were implemented in the society by the Imām of every period who was the vicegerent of Allah and His Messenger (ﷺ). Since God has introduced them as the leaders of the *ummah*, the rule of any other was naturally a usurpation of the authority [*wilāyah*] of God, the Messenger (ﷺ) and the Imāms (‘*a*). The people were duty-bound to pave the ground for the rule of the Imām of their time.

2. The sovereignty of God in the sphere of legislation demands that the government during the period of occultation must also serve the interests of the *shar‘ah* in the realms of actions, decisions and laws. It

cannot be accepted that the religion is accepted and God is the Sovereign and yet the Islamic laws are not implemented. Thus, as a rational necessity emanating from the sovereignty of God, the Islamic laws must be implemented.[6](#)

3. Implementation of Islamic laws necessitates a decision-making body or state. The verdicts of the *shar‘ah* regarding different areas such as economics, politics, *‘ud‘ud*,[7](#) retribution and punishment, training and education, and so on cannot be implemented without the existence of a government. Just as earning a livelihood necessitates the establishment of a government, the religion also cannot be implemented except through a powerful ruling authority. Accordingly, a government is necessary as a prerequisite to the implementation of the religion of God.[8](#)

4. The existence of a government or state naturally necessitates requirements [*ilz‘im*] and mandates [*dast‘ur*]. The state presents religious orders as legal obligations. In other words, the implementation of religion lies in the government’s imposition. This obligation is acceptable provided that the imposing institution has the competence to impose them. If the ruling person or body does not have this competence, he or it will have no right to rule and impose orders. In essence, such an imposing institution lacks legitimacy [*mashr‘iyyah*].

Human beings on their own capacity have no right to oblige others to do a thing and impose orders upon them unless God, who is the Real Ruler, grants such a right. This is the principle of “man’s lack of authority” on the basis of which one has no authority [*wil‘ayah*] over another unless he has rational or textual proof to exercise such authority.

5. Since one of the elements of the Islamic government is the Islamic nature of its decisions, reason dictates that it must be headed by a person who is an expert on Islam.

6. After the acceptance of Imamate and the acknowledgment of the point that the infallible Im‘ams (‘a) are the true leaders of the Islamic society (after the Prophet (ﷺ)) and that divine sovereignty is implemented through them, religious leadership essentially belongs to the infallible Im‘ams (‘a) and no other person has the right to rule except when that right is delegated to him. In the case that there is no proof of the infallible Im‘am’s (‘atfs) delegation of this right to a specific person, since the government cannot be without a head, the most pious and most righteous person among the Islamic scholars shall act as the Im‘am’s deputy [*n‘ib*].[9](#)

This view is a paraphrase of the theory of the guardianship of the jurist [*wil‘ayah al-faq‘ah*]. The concept of *wil‘ayah* in this context is nothing but the supervision of the Islamic society and it does not mean interdiction of the people. Even if all people have attained sufficient social maturity and rational growth, in the realm of government and collective welfare, there is still a need for an institution of leadership to maintain law and order. In the Sh‘ah culture, this institution is what we called *wil‘ayah*.

2. Textual proof

Apart from rational proof regarding the *wilayah* of the competent jurist or Islamic scholar, it can also be clearly inferred from sayings of the Infallibles (‘a) that the competent jurists [*fuqah*] and *mujtahid* are the deputies of the Imams (‘a) during the period of occultation and that the issue of leadership, like religious authority, is within the competence of the *fuqah*. In one of his sayings, the Messenger of Allah (ﷺ) has described the ‘*ulam*’ as his caliphs. In reply to a question on the identity of his caliphs, the Apostle (ﷺ) said: “They are those who narrate my *Sunnah*.”¹⁰

Undoubtedly, the most common definition of “caliphate” is “the leadership of the *ummah*”. Meanwhile, it is evident that the narrators of the *Sunnah* are those who have the competence to know the substance of religious views. Therefore, the Holy Prophet (ﷺ) has delegated the position of caliphate and leadership after him to the religious scholars. During the presence of the Imams (‘a), they were the indisputable religious scholars while during the period of occultation, the *mujtahid* are the narrators of religion.

In another narration, the Imam of the Age (‘atfs) said about the duty of the faithful in the events to come in the future: “In such cases, refer to those who narrate our traditions. They are my proof over you and I am Allah’s proof over them.”¹¹

Imam al-Mahd (‘atfs) referred his followers to the *fuqah* and this referral is not only in explaining religious issues (religious authority) but also in matters of implementation (political leadership). In other words, both religious authority and political leadership have been delegated to the religious scholars.¹²

In these narrations, a specific *faqh* or *mujtahid* has not been appointed for the post. Any person who possesses this competence is qualified to exercise authority [*wilayah*]. Therefore, these narrations indicate the general *wilayah* of the *fuqah*. As such, during the period of oppressive governments, in judicial affairs and some issues requiring administrative decrees, the Sh‘ah used to refer to the *fuqah* as much as possible, and the *fuqah*, in turn, used to address the affairs of the Sh‘ah as much as they could.

Any objection relating to the possibility of different *fuqah* exercising *wilayah* at the same time is unjustifiable because in periods of *ghat* rule every *faqh* exercises *wilayah* within his own jurisdiction. Whenever the leadership of a *faqh* acquires general acceptance and he has the opportunity to administer affairs, his decree is also binding upon the other *fuqah* within his jurisdiction and they should not independently issue administrative decrees. Thus, upon the formation of an Islamic state, a *faqh* shall exercise *wilayah* over the government.

There are many ways of selecting the one among the *fuqah* to head the government. One of them is through general suffrage in the sense that the faithful pay allegiance to one of the *fuqah* who are competent and rightful to exercise *wilayah*. Thereafter, his view shall also be binding upon the rest of *fuqah*.

Hence, *wilayah*, on the one hand, is an “appointed” [*intibah*] position in the sense that the *fuqah* have been designated to this position by the Imams (‘a). On the other hand, there is also the people’s will through “election” to make “official” a *faqih*’s *wilayah* and the preeminence of his opinion over that of other *fuqah* in the realm of government and public welfare.

Assuming that the selected person loses one of the required intellectual, practical or moral conditions of leadership, he is automatically removed from the position of *wilayah*. Similarly, if a *mujtahid* loses his competence in *ijtihad*, he is automatically removed from the position of religious authority. As such, there is a system of identification in the Islamic government which constantly supervises the administrative performance of the *faqih*.

Whenever it finds out that the leader is no longer competent to administer the affairs of society, it will inform the society accordingly so that the faithful can pay allegiance to another *faqih* who possesses all the necessary qualifications of a leader. In our Islamic system, the Assembly of Experts shoulders this responsibility. This assembly, composed of Islamic scholars and *mujtahid* familiar with current issues, has the prerogative to inform the people of their responsibilities toward the Leader and his leadership. [13](#)

Dimensions of the theory of *wilayah al-faqih*

It is said that during the period of occultation of the infallible Imam (‘a), just as the *fuqah* are in charge of interpreting the religion and expounding the laws, they also assume the post of leadership and implementation of the religion. The different dimensions of the theory of *wilayah al-faqih* will become clear through attention to the following points:

1. According to the theory of *wilayah al-faqih*, in terms of leadership the Islamic scholar is the successor of the infallible Imam (‘atfs). This succession does not mean that the true station of the *faqih* is exactly the same as that of the infallible Imam (‘atfs). Obviously, the true position and station of the infallible Imam (‘a) can never be assumed or occupied by anyone else. The succession of the *faqih* encompasses only certain aspects mentioned earlier. However, the superiority of the station of the infallible Imams (‘a) compared with that of the *fuqah* and religious scholars does not invalidate the fact that both the Imams (‘a) and the *fuqah* must be obeyed as the leaders of society.
2. A state based on *wilayah al-faqih* has the necessary authority to decide on matters of public interest. Therefore, when taking public welfare, the principle of consultation and Islamic laws into consideration, the state may decide to restrict individual liberties. These prerogatives are likewise known as “absolute guardianship” [*wilayat-e muqlaqeh*]. Acceptance of absolute guardianship does not mean acceptance of unlimited power. In other words, “absoluteness” is not incompatible with “constitutionalism”. That is, on the one hand, the Islamic government is bound to implement Islamic laws and observe Islamic standards. Even in the government of the Infallibles (‘a), no decision which will incur the displeasure of God can ever be made. [14](#) On the other hand, since God has made the Imams (‘a) the guardians of the people and the society of the faithful and they, in turn, have delegated this position to the *fuqah*, the

latter have the right to exercise *wilāyah* within the framework of public interests and the Islamic government has the necessary prerogatives as far as this framework is concerned. Therefore, the following conclusions can be drawn:

Firstly, absoluteness can never signify disregarding religious laws. In other words, *wilāyah* is not absolute to such an extent that the religious laws can be ignored, for basically *wilāyah* is in fact intended to make the religion prevalent.

Secondly, absoluteness does not mean that the holder of *wilāyah* can make any decision he likes. In addition to being compatible with religious laws, decisions must be consistent with the interests of people. Without taking into account the public welfare, individual interests cannot be sacrificed. In principle, in the framework of religious laws, none except the Islamic government has the right to ignore individual interests unless there is a higher set of interests at stake, i.e. the interests of society.

Thirdly, the jurist-guardian [*walī al-faqāh*] is obliged to consult with experts. Thus, absoluteness does not mean disregarding the views of other specialists. As provided for in the Constitution of the Islamic Republic of Iran, the Expediency Council serves as the advisory body of the *walī al-faqāh* in identifying what is expedient. [15](#)

3. The theory of *wilāyah al-faqāh* is in no way incompatible with republicanism. Of course, *Wilāyah al-faqāh* signifies the rule of religion and naturally, with respect to the rule of divine laws, the people have no authority of their own and based on their religion, they are obliged to implement the laws of Islam. The legitimacy [*mashrū‘īyyah*] of Islamic laws does not emanate from the will of the people. In the same vein, the rightfulness of the Islamic government does not depend on the inclinations of the people.

It is undeniable, though, that an Islamic government is established through the determination of the people and if the people do not desire its establishment, the Islamic government can never be put into practice. Therefore, the legitimacy of a government must be distinguished from its materialization.

Since the Islamic government is a means to materialize some elements of divine sovereignty, its rightfulness stems from the religion. However, in many societies a religious government is not established because the people are incapable of materializing their wish. As such, the religious government has two pillars: a divine aspect—its rightfulness and legitimacy [*mashrū‘īyyah*], and its people-related element which is the source of the government’s acceptability [*maqbuliyyah*]. *Wilāyah* represents the first pillar of the Islamic government while republicanism is the basis of the second.

It is significant to note that the Islamic government cannot afford to disregard its acceptability, for without legitimacy it has no means to exert influence and implement its will and without influence it has no basis for the materialization of its religious aspirations. Thus, the Islamic government must be acceptable to the people both during its establishment and its perpetuity.

Given this explanation it becomes clear that *wilāyah*, as a matter of appointment [*intibāh*], does not

signify disregard for the people's role in government; rather, it only expresses emphasis on the first element.

4. It is clear that apart from intellectual competence to identify religious views, the government is also in need of other sources of expertise. The theory of *wilayah al-faqih* does not mean that in the Islamic government only *fiqh* and *shar'ah* are held in honor while other types of expertise and specializations are not shown importance. The decisions of the government are legitimate provided that they are endorsed and approved by the religious leader. It is natural, however, that these decisions must have undergone the required process and reached the stage of final approval. Certainly, in case that they require non-juristic expertise, they must undergo a specific process.

5. In the *wilayah al-faqih* system, the *wali al-faqih* is both a real and legal entity. As a real entity, he is equal to all other citizens of the Islamic state in the eyes of the law. As a legal entity, he gives legitimacy to government decisions. After obtaining the approval of the *wali al-faqih*, administrative decrees become binding to all including the *wali al-faqih* himself and other *fuqah*, and no one is excused.

Naturally, whenever a stated law tends to go against the interests of the people, it shall be changed through a well-defined legal mechanism except in cases where it is not possible to do so. In case of the latter, using his legal prerogative and after consultation with the concerned experts, the *wali al-faqih* can suspend a law that tends to go against the public interest.

Therefore, "absolute guardianship" does not efface the rule of law and welfare-orientation of the society. Like all other citizens, the *wali al-faqih* is obliged to abide by every law enacted for all. In the juristic parlance, to violate the ruler's decree is unlawful even to the ruler himself. After undergoing the entire legal process, a law is considered a ruler's decree.

6. *Wilayah al-faqih* does not deprive the people of any of their legitimate and legal liberties. In the system based on *wilayah al-faqih*, the people enjoy civil liberties and have the right to decide on their choice of occupation, place of residence, spouse, and other civil liberties related to their personal lives. Similarly, they enjoy freedom of belief and the government does not impose any particular belief upon them. Naturally, any freedom the exercise of which adversely affects collective life and public welfare lacks any legitimacy.

In the Islamic system, the people are free in their political activities and they are able to criticize government policies. As required by the rule of enjoining what is right and forbidding what is wrong, the people in the Islamic society abide by government orders but at the same time monitor government policies and even criticize them whenever necessary.

They are religiously obligated to keep their criticism constructive and relay their views to officials and leaders of the Islamic society even up to the highest echelon. On the other hand, the Islamic state is obliged to encourage the participation and supervision of the people. In other words, it must strive to promote the people's political liberties.

Meanwhile, it must be noted with emphasis that the Islamic approach to freedom is much different from that of the atheistic and secular schools of thought. From the Islamic perspective, freedom does not signify empowerment of the people to commit sins and promiscuities—this is unacceptable. Any promotion of ‘freedom’ which carries the people away from divine sovereignty is unethical and unprincipled and in conflict with virtue.

7. In the Islamic system, many *mujtahid* have been recognized by the people as sources of emulation [*marja' at-taqi*]. Meanwhile, the *wal al-faqih* is also a *mujtahid* who has a particular understanding of Islamic laws and this understanding may be different from that of other *mujtahid* at a particular time. In such a situation, this question is raised: Which view should the people follow in discharging their religious duties?

This conundrum has also been expressed in a different way: In a religious government, on the one hand, the door of *ijtihad* is open and different interpretations are advanced by *marja' at-taqi* and *mujtahid* through the institution of *ijtihad*. On the other hand, all the many views cannot practically be converted into administrative decrees. In such a situation, how can administrative decisions be based upon religious views? What is the duty of those people who follow *marja' at-taqi* whose views are not reflected in the administrative decrees and laws?

In reply to these questions, it must be said that obviously, no law can accommodate and reflect all views. It must be borne in mind that once a requirement of the law and government is approved, only one *ijtihad* can be the basis of a law or administrative decision. Similarly, we have implicitly accepted that in any realm where the government has to make decisions, naturally the organs constituting the government must act based on those decisions. In such a situation, in cases where acting upon the law is not considered against the verdicts of a *marja' at-taqi*, practically no problem will arise. However, in cases where a conflict exists, assuming that the issue in question is within the jurisdiction of the religious government, the government's decree or decision shall prevail.

Therefore, by delineating the jurisdiction of government decisions and those of personal affairs which are beyond the jurisdiction of the government, the faithful citizen can abide by government policies and at the same time follow his *marja' at-taqi*. This is also applicable to the *marja' at-taqi* in the sense that, although they have their own particular juristic views, they must also abide by government policies. In the same vein, experts in fields other than religion must abide by administrative decrees and government decisions even where their expert opinions are inconsistent with those decrees and decisions.

8. The theory of *wilayah al-faqih* is the understanding of the Shāh 'ulam' and *mujtahid* from the religious sources. Among the *mujtahid*, there may possibly be different views on the Islamic political system during the period of occultation which are distinct from the theory of *wilayah al-faqih*. In such a situation, there is no doubt that only one view must be considered official on which the religious government should be based.

Formalization of a political system has its own process. One conventional method is to transform a theory on the Islamic system into a public covenant. When based on public consensus, a theory acquires a legal status, and it is natural that others who possess a different view must accept the theory as the foundation of the government. It is true that the door for discussion and exchange of opinions regarding the theoretical foundation of the government is always open and the right of concerned experts and scholars to express views is reserved.

However, the subject must not be discussed in such way that it would lead to public distrust in the foundation of government and indifference to the legal body, especially the constitution. Obviously, even those who believe that the law must be changed acknowledge a specified way or mechanism of legal amendment.

9. Every political system is explainable within the framework of a particular worldview. When accepting a particular worldview, not every political system can then be accepted. Naturally, depending on a person's perspective on the world and humanity, there are certain limitations in his choice of the type of political system.

Given this explanation, it must be noted that the religious government must not necessarily be consistent with other prevailing political systems. It should not be expected that every political system could be reconciled with the Islamic worldview in every aspect. As such, in dealing with political systems which have been formed on the basis of non-Islamic viewpoints, one must be very careful and meticulous and reserve the right to criticize and deliberate. If there are positive or acceptable points in these systems, these points must be taken and used while observing the limits set by the Islamic worldview or ideology.

This point is applicable with respect to all political concepts. For this reason, in dealing with such concepts, first of all their association with religious views must be examined. Of course, without sufficient knowledge of both the concepts and religious ideology, this examination will be defective. It is possible that in certain political systems, there are certain elements that can be accepted as positive points.

On this basis, it cannot be asserted that democracy, as it is implemented in the West, is totally compatible with the Islamic system. Nevertheless, some of its features as a positive product of human experience can be considered compatible with religious concepts. In other words, a democratic model can be accommodated within the framework of an Islamic system. That is, while the legitimacy of the Islamic system is anchored in religious views, the substance of democratic decisions is also compatible with Islamic law. So long as it does not contradict Islamic rules, democracy as a method or means can be taken.

Public participation in different levels of decision-making, implementation of a parliamentary system, devising systems to monitor the performance of executive organs, selection of officeholders through general suffrage, and similar elements can also be adopted in an Islamic system.

1. – See books on jurisprudence, the section regarding ijtihād and taqlīd.

2. – See Sharaf ad-Dīn al-Mūsawwī, Al-Murājīʿat, Correspondence 4.
3. – See books on jurisprudence, the section regarding ijtihād and taqlīd.
4. – Pacta sunt servanda: abidance with a treaty in letter and spirit. [Trans.]
5. – Obviously, indefinite laws cannot automatically be considered religious laws. Contrary to Sunnī ijtihād in which indefinite and hypothetical laws are sometimes treated as proof, in Shīʿah ijtihād such is not the case.
6. – See Imām Khomeinī, Al-Bayʿ, vol. 2, pp. 461, 464.
7. – ʿUdūd (literally meaning boundaries or limits) in the Islamic law are generally applied to penal law for punishments prescribed for particular crimes whose extent is determined by law. [Trans.]
8. – Al-Bayʿ, vol. 2, pp. 461, 464.
9. – In view of the fact that the principle is the absence of authority, we cannot choose just any person to act as the Imām’s deputy but must choose the best available person. In a government based on religious laws, the best available person is none except the duly competent jurist [faqīh jāmīʿ ash-sharʿīyī].
10. – This narration is recorded in Man Lī Yaʿṣurūh al-Faqīh, vol. 4, p. 420. The text of the narration is as follows:

رسول الله (ص): أَللَّهُمَّ اِرْحَمْ خَلْفَائِي. قِيلَ يَا رَسُولَ اللهِ! وَمَنْ خَلْفَاؤُكَ؟ قَالَ الَّذِينَ يَأْتُونَ مِنْ بَعْدِي بِرِوَايَةِ عَنِّي حَدِيثِي وَسُنَّتِي.

“The Messenger of Allah (ﷺ) said: ‘O Allah! Have mercy on my caliphs.’ ‘Who are they, O Messenger of Allah? And who are your caliphs?’ He (ﷺ) said: ‘They are those who after me shall narrate my ʿadāth and my Sunnah.’”

11. – Shaykh ʿUrr al-ʿamīlī, Wasʿil ash-Shīʿah, “Abwāb ifṣīt al-Qṣṣ,” section 11, ʿadāth 9. The text of the narration is as follows:

أَمَّا الْحَوَادِثُ الْوَاقِعَةُ فَارْجِعُوا فِيهَا إِلَى رِوَاةِ حَدِيثِنَا فَإِنَّهُمْ حَجَّتِي عَلَيْكُمْ وَأَنَا حُجَّةُ اللَّهِ عَلَيْهِمْ.

12. – Al-Bayʿ, vol. 2, p. 474.

13. – Article 107 of the Constitution of the Islamic Republic of Iran thus stipulates:

“(1) After the demise of Imām Khomeinī, the task of appointing the Leader shall be vested with the experts elected by the people. The experts will review and consult among themselves concerning all the religious men possessing the qualifications specified in Articles 5 and 109. In the event they find one of them better versed in Islamic regulations or in political and social issues, or possessing general popularity or special prominence for any of the qualifications mentioned in Article 109, they shall elect him as the Leader. Otherwise, in the absence of such superiority, they shall elect and declare one of them as the Leader. The Leader thus elected by the Assembly of Experts shall assume all the powers of the religious leader and all the responsibilities arising from it. (2) The Leader is equal with the rest of the people of the country in the eyes of law.”

14. – Al-Bayʿ, vol. 2, p. 461.

15. – Article 112 of the Constitution of the Islamic Republic of Iran thus stipulates:

“(1) Upon the order of the Leader, the Nation’s Exigency Council shall meet at any time the Guardian Council judges a proposed bill of the Islamic Consultative Assembly to be against the principles of sharʿah or the Constitution, and the Assembly is unable to meet the expectations of the Guardian Council. Also, the Council shall meet for consideration on any issue forwarded to it by the Leader and shall carry out any other responsibility as mentioned in this Constitution. (2) The permanent and changeable members of the Council shall be appointed by the Leader. (3) The rule for the Council shall be formulated and approved by the Council members subject to the confirmation by the Leader.”

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