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What is Wilayat al-Faqih?

The doctrine of *Wilayat al-Faqih* forms the central axis of contemporary Shi'a political thought. It advocates a guardianship-based political system, which relies upon a just and capable jurist (faqih) to assume the leadership of the government in the absence of an infallible Imam. However, although the guardianship of a high-ranking religious scholar is universally accepted amongst all Shi'a theories of governance, any disagreement is focused on the details such as the role of the jurist and the scope of his authority.

Because the theory of *Wilayat al-Faqih* has emerged from Imamate – which constitutes a cornerstone of *Shi'ism* – it is necessary to understand this political doctrine within the context of this concept of leadership. By comparing it to the tradition political theory of Sunni jurists – the doctrine of caliphate – and characterizing its major features, we will be able to better understand and appreciate the doctrine of *Wilayat al-Faqih*.

In order to overcome the ambiguities surrounding the relationship between *Wilayat al-Faqih* and the position of an Islamic jurist as a source of guidance and imitation (Marja'a e-taqleed), it is necessary to discuss the various dimensions of guardianship in the absence of the infallible Imam. Also in order to respond to those who suppose that this doctrine is an entirely new thesis, which has only recently appeared in Shi'a jurisprudence, and argue that it opposes the traditional position of scholars and jurists, it is vital to briefly explain the historical background of *Wilayat al-Faqih* amongst the Imami Shi'a School of Islamic thought.

The Concept of Imamate

The political status of the Imams is an essential component of Imami *Shi'ism*. They are considered to be the true successors of the most noble Prophet Muhammad (pbuh), and those who subscribe to this Islamic perspective believe that any successor must be appointed by Allah, through his Prophet. However, there are those who attempt to reduce Imamism to a merely political attitude, a party that supports Imam Ali (pbuh) and his family as the sole legitimate successor to the Holy Prophet. Hence

many Sunni scholars define *Shi'ism* as follows:

Shi'a are those who especially follow Ali and maintain his leadership and succession of the Prophet by his appointment (nass) and testament openly (publicly) or privately, and also believe that Ali's authority (awla) never goes out of his descendants^{[1](#)}.

But the political authority of the Imams does not imply that their role and status are restricted to governance or leadership. For their followers, the Imams represent the highest level of piety and they embody the same qualities as exemplified by the most noble Messenger of God. As Anthony Black describes them:

The twelve Imams themselves, and above all the present twelfth or hidden Imam, were held to be necessary to the constitution of the Universe and of true religion. The Imam is God's proof (Hujjah: guarantee), he is the pillar of the Universe, the 'gate' through whom God is approached. Knowledge of revelation depends upon him^{[2](#)}.

Some of the qualities attributed to the Imams, such as “proof of God” (*Hujjah*) and “the guardian” (*Wali*), which are discussed later, refer to their great authority and are essential to understanding Shi'a political thought. Ayatollah Khomeini described “proof of God” as follows:

A 'proof of God' is one whom God has designated to conduct affairs, all his deeds, actions, and sayings constitute a proof for the Muslims. If someone commits an offence, will be made to the 'proof' for adducing evidence and formulating the charge. If the 'proof' commands you to perform a certain act, to implement the penal provisions of the law in a certain way, or to spend the income derived from booty, zakat, and sadaqa in a certain manner and if you fail to obey him in any of these respects, then God Almighty will advance a 'proof' against you on the day of Judgment^{[3](#)}.

The Imams are considered to be the successors of the Prophet (pbuh) and the rightful recipients of his authority. This is not because they are from his family; rather, it is because they are pious, obedient to Allah and embody characteristics that are pre-required for this level of religious-political leadership. Equally so, they are not appointed by any popular consensus; Imamate is instituted by divine installation (*nasb*); only Allah truly knows who possesses the qualities required to fulfil this duty, therefore only He is capable of appointing them. Shi'a considers Imamate, like Prophethood, to be a fundamental belief, and obedience to the authority of their Imam a religious obligation. Other than receiving divine revelation, which is specifically for the prophets, the Imams have all the qualities, duties and authority of the Prophet (pbuh). Political and religious guidance emanate from them and they are guardians over the believers. This is a manifestation of Allah's guardianship over human beings.

In addition to this, the concept of guardianship is another crucial element of Shi'a political doctrine.

Imam as “Wali”

In many verses of the Qur’an, God introduces himself as “Guardian of the Believers” (*Wali ul-Mumineen*):

Allah is the Guardian of the believers. [Chapter 3, Verse 68]

Allah is the Guardian of those who believe. [Chapter 2, Verse 257]

Allah suffices as a Guardian. [Chapter 4, Verse 45]

And according to several verses of the Qur’an, this guardianship has been delegated to the Prophet, so his authority is rooted in the aforementioned Divine authority:

Only Allah is your Guardian (Wali) and His Apostle. [Chapter 5, Verse 55]

The Prophet has a greater claim on the faithful than they have on themselves. [Chapter 33, Verse 6]

Verses such as these illustrate that the authority and guardianship of the Prophet was originally established and legitimized by Allah’s appointment. Following this interpretation, the followers of the Imams provide a large number of traditions and historical evidence that confirm the delegation of the Imams, by Allah, through the Prophet (the doctrine of appointment) as “guardians of the believers” (*Wali ul-Mumineen*).

Although the consequences of this doctrine will be considered over the following pages, at this point it would be helpful to discuss the meaning of the terms “*Wali*” and “*Wilayat*” and their usage, especially with regards to jurisprudence (*fiqh*).

Arabic lexicographers have mentioned several meanings for the word “*Wali*”, such as:

- (1) Friend
- (2) Supporter
- (3) Devoted
- (4) Protector.

There are a series of words derived from the root of “*Wali*”, for instance “*Wilayat*”, “*Mawla*” and “*Mawala Alayh*”. By considering the context to which these are applied, it becomes apparent that they apply to the situation that someone’s affairs have been taken charge of by someone else. Therefore, whoever takes charge of these affairs is the latter’s *Wali*, and consequently it is often applied to governance as well⁴.

When the term “*Wilayat*” is attributed to the Imams, it carries the implications of “mastership”, “sovereignty” and “lordship”. This is to indicate the authority of the Imam over the believers, who are

subject to his guardianship. Imami theologians refer to the Qur'an (especially Chapter 5, Verse 55) and prophetic traditions to support the exclusive authority (*Wilayat*) of the Imams.

The absolute authority and guardianship of Allah (*Wilayat al-mutlaqih*) forms a central pillar of Imami political thought, which maintains that whoever wishes to exercise this authority must be appointed by Him. It is this idea that distinguishes Imamism from all other political theories and even other sects of *Shi'ism*; because although all schools of Shi'a thought agree that the Imam is subject to divine appointment through the Prophet, only Imamism tries to sustain this approach under circumstances when the infallible Imam is absent. In this doctrine, it is Allah alone who holds the absolute authority and He has explicitly appointed the Prophet and a number of believers (his family, i.e. the Ahlul-Bayt) as guardians (*Wali*), who are entrusted with authority over the Muslims.

Only God is your Wali and His Apostle and those who believe. Who perform prayer and pay alms while they bow. [Al-Qur'an, Chapter 5, Verse 55]

The last phrase, "those who believe", according to Shi'a commentators refers to the Imams, whose *Wilayat* was instituted through their appointment by the Prophet⁵.

However, what truly distinguishes the Imami political doctrine from all other forms of Shi'a political thought emerges from the Imami concept of leadership during the period of greater occultation; in which the Twelfth Imam is absent. The Imami creed adopts a system of vicegerency, whereby the authority (*Wilayat*) is entrusted to the just and capable scholar (*faqih e-adil*), who acts as a deputy to the absent Imam. Thus, the guardianship of a jurist is legitimized and his authority is related to the original and absolute authority of Allah. A clear distinction must be drawn, however, between the authority of Imamate and the guardianship of the scholars. The Imams, whose authority is established upon their explicit designation by the Prophet, delegate and entrust a degree of their authority to those who possess specific qualities (such as justice and jurisprudence in the case of the fuqaha). So whereas the Imams were specifically appointed as guardians of legitimate authority, the jurists (fuqaha) are not explicitly selected by name, but rather implicitly chosen as those who possess the correct qualities for leadership.

The scope of a jurist's authority and the realm of his vicegerency constitute the most essential, while simultaneously controversial element of Imami political thought. However, before entering this crucial debate, it is important to distinguish Imami political doctrine from the political system advocated by the traditional Sunni Jurists, which is the doctrine of Caliphate.

The Theory of Caliphate

Despite the common disagreement amongst their schools of jurisprudence, Sunni jurists have traditionally advocated a specific theory of state known as Caliphate; a doctrine that, both as a political theory and significant historic reality, dominated the Islamic community for a considerable amount of

time. In the interests of the present discussion, it is necessary to differentiate between the theory of Caliphate and the doctrine of Imamism.

Caliph essentially means successor, or one who assumes a position previously held by another. However, this word is not confined to the context of political authority, so a caliph may not simply be the successor of a previous governor, but also someone who is definitely appointed as a deputy and entrusted with authority by the person who appoints him, somewhat synonymous with 'deputy' or 'vicegerent'[6](#).

Historically, the early Muslims are said to have applied the title of Khalifa to the first four rulers after the Prophet (Pbuh). In its most basic meaning, the Khalifa is one who exercises governance in place of the Prophet. Abu-Bakr was once approached by a man, who asked him "Are you the deputy of the messenger of Allah?" to which Abu-Bakr replied, "No." The man asked, "So who are you"? Abu-Bakr answered, "I am the successor of the Prophet"[7](#).

Montgomery Watt writes:

Since Abu-Bakr was not appointed by the Prophet except to deputize for him in leading the public prayers, the phrase "Khalifa of the messenger of God" cannot have meant 'deputy'. The primary meaning must have been merely 'successor'[8](#).

Although many rulers of the Umayyid dynasty attempted to attach a divine status to the title of successor (Caliph), Sunni Jurists generally consider the Caliph to be a legitimate ruler who governs and directs the state and its society. His appointment is dependant upon specific qualities that the ruler must possess, however there is no universal agreement as to what these characteristics must be.

This source of disagreement initiated the first political divergence amongst the Muslims, which precipitated, sustained and continues to sustain a theological debate with focuses on legitimate leadership following the death of the Prophet (pbuh). However, the theory of Caliphate was not enshrined until the reign of the Abbasids, when it was devised and formulated by Sunni Jurists. Black writes:

An articulate community, traditionalist political theory was finally formulated in the first half of the eleventh century. Its doctrine of the vicegerency met the requirements of the emerging religious community by radically scaling down expectations placed on the deputy, while retaining the legitimacy of the 'Abbasids as leaders of the Muslims. The first four rightly guided (Rashidun) deputies were now placed in a special category. The immediate motive was to safeguard the 'Abbasids Caliphate against alternatives, Shi'a Imamism or Isma'ilism[9](#).

The first, and most significant Sunni Jurist who attempted to systemize the doctrine of Caliphate within an Islamic juridical framework was Abu'l Hasan Al-Mawardi (Basra 979 – Baghdad 1058). He was a Shafi'i judge in Nishapur, and later became the chief Justice of Baghdad. In his famous book "al-ahkam

as-sultaniyya” (the laws of governance), al-Mawardi attempts to legitimize the authority of the Abbasid government, while striving to justify the use of coercion as an implement of governance. He argued that a caliph is divinely entrusted with authority in political, as well as religious affairs [10](#).

He writes:

God ...ordained for the people a leader through whom he provided for the vicegerency of the Prophet and through whom he protected the religious association; and he entrusted government to him, so that the management of affairs should proceed (on the basis of) right religion... The leadership became the principle upon which the bases of the religious association were established, by which the well-being of the people was regulated [11](#).

When examining this perspective, it is important to realize that the traditional advocates of Caliphate are often inspired and influenced by the Ash'ari School of Islamic thought. This particular doctrine emphasizes divine predestination (taqdir) and the will of God as a unique agent in the world. Naturally, the fundamental principle of this doctrine brings them to the conclusion that one person, solely by the will of Allah, will succeed to gain political authority.

Abu'l-Fadl Bayhaqi (995–1077) writes:

Know that the Lord most high has given one power to the Prophets and another power to Kings, and he has made it incumbent upon the people of the earth that they should submit themselves to the two powers and should acknowledge the true way laid down by God [12](#).

Al-Ghazzali in his *Advice to kings* says:

God has singled out two groups of men and given them preference over others: one group is the Prophets and the other is kings. Prophets he sends to His servants to lead them to Him and Kings to restrain them from (aggression against) each other [13](#).

This outlook, which assumes that the authority of a Caliph includes everything and that they are naturally predestined according to the eternal will of God, is naturally compatible with the opinion currently adopted by contemporary Sunni Jurists, who argue that Allah and the Prophet did not appoint a particular person or persons as rulers over the Muslims. After all, the logical consequence of this concept of predestination and unique divine agency is that it doesn't matter who governs or how he obtains authority, for in any case and circumstance it would be subject to the will of God. This is the first distinction between Shi'a political thought and the doctrine of Caliphate. For Imamites the legitimate authority must be designated – directly or indirectly – by God.

The second distinction that must be made, however, concerns the method of appointing a Caliph. Imami political theory maintains that there is only one legitimate means to designate authority; divine installation. Even the guardianship of just and capable jurists (faqih adil) is established upon this basis; they are the vicegerents of the absent Imam, whose divine leadership is established by explicit

designation, and who implicitly entrusted them with the guardianship of his followers. All of this authority, of course, is bestowed by Almighty God who has absolute authority and guardianship over all of creation.

In rejecting the explicit appointment of a successor to the Prophet, Sunni Jurists maintain that there are several means by which a caliph may be elected, which means there is no unique way to legitimize political power. Instead, they accept the appointment of the first four caliphs following the Prophet's death as a religious source to sanction political authority. Consequently, according to Sunni interpretations, a caliph may be elected either by a few of the elites (e.g. some outstanding companions of the Prophet), by the explicit designation of his predecessor, or by an appointed council (shura).

The fact that many of the contemporary political positions of that time had been secured by coercion and military power, created a serious obstacle for the theory of caliphate and many Sunni scholars attempted to find a means to justify these authorities. For example, Al-Mawardi attempted to legitimize the authority of de facto rulers by designating them as government ministers (wazir) and commanders (amir), whom the caliph had to recognize¹⁴.

Finally, the third distinction arises, which is concerned with the qualities that a leader must possess. According to the doctrine of *Shi'ism*, an Imam is not merely a political leader; rather he is also a religious leader who undertakes the exposition of divine sciences. Like the Prophet, he must embody the highest moral and intellectual qualities, such as immunity from sin and infallible knowledge. However, there is a wide-ranging disagreement amongst Sunni scholars regarding the characteristics of a caliph. Commonly, they do not believe that a candidate must be sinless, or enjoy infallible knowledge. In some cases, justice and fairness are not considered necessary, and obedience is required of even an unjust or oppressive tyrant. Al-Ghazzali says:

*An evil doing and barbarous Sultan, so long as he is supported by military force (shawka) so that he can only be deposed with difficulty, and that the attempt to depose him would create unendurable civil strife, must necessarily be left in possession, and obedience must be rendered to him*¹⁵.

A general and significant feature of Sunni political thinking is that there is no procedure for the people to depose an unjust ruler. Rather, the grounds on which he may be removed are considerably reduced. For instance, Al-Baghdadi (d. 1037) said that allegiance (*Bay'a*) might only be revoked on grounds of heresy, incapacitation, imprisonment or serious injustice; although the latter is not accepted as a cause for disobedience by most Sunni scholars¹⁶.

Although Imami political theory does not require a *Wali al-faqih* to be sinless or infallible, it does mention characteristics such as justice, fairness and expertise in jurisprudence as necessary qualities. This is because the jurists (fuqaha) are not only moral and legal experts they are also representatives of the hidden Imam.

The Meaning of Wilayat al-Faqih

The words “*Wali*” and “*Wilayat*” have the same root (w-l-y). From it’s primary meaning of “to be near or close to someone or something”, is derived the general meanings “to be in charge”, “to govern” and “to exercise authority”. In Islamic juristic (*fiqh*) terminology, the term “*Wilayat*” has several usages. Some of these are as follow:

1. Wilayat al-Qaraba

This type of authority (*Wilayat*) is given to a father or paternal grandfather over minors and those who are insane (even after the age of adolescence). This authority to act as a guardian is based on relationship.

2. Wilayat al-qada’

According to Imami Jurisprudence, the infallible Imam originally possessed the sole authority to judge amongst the people based upon God’s law and revelation. At this time, however, a just and capable faqih may undertake this responsibility with the Imam’s permission.

3. Wilayat al-Hakim

In this case, authority is given to a regular administrator of justice (hakim), to supervise the interests of a person who is unable to take care of his own affairs; such as a fool or an insane person. Whoever does not have a guardian (*Wali*), jurists say: al-hakim is the guardian of those who have no guardian.

4. Wilayat al-Mutlaqa (The Absolute Authority)

According to textual evidences, such as verse 6 of Chapter 33 of the Qur’an, Imami scholars believe that the Prophet and Imams have divine authority over the people. The verse states that the Prophet has more rights over the believers than they have over themselves; thus his discretionary authority is effective amongst the people. This same authority, according to Shi’a beliefs, is also bestowed upon the Imams.

5. Wilayat al-Usuba

According to Sunni jurists, this authority is connected to inheritance; it encompasses a class of inheritors. This category of *Wilayat* is not accepted by Imami scholars.

According to Imami doctrine, absolute authority (*Wilayat al- Mutlaqa al-Elahiya*) remains with the Absent Imam, even during his greater occultation. Therefore, in order to exercise authority, every just and capable faqih requires the sanction of the Imam, who is in turn designated by God as the possessor of absolute authority and guardianship.

Although all Imami scholars generally agree upon the doctrine of Vicegerency (Niyabat) that emphasizes the role of capable jurists as deputies of the Absent Imam, who are entrusted with a degree of his authority. However, the crucial issue is the scope and extent of this vicegerency and in which affairs the jurists have authority.

In order to clarify the dimensions of this discussion, it is necessary to examine the traditional roles and functions that qualified jurists undertake as deputies of the Imam.

i) Making a Decree (Al-Ifta)

With regards to guidance in rulings and religious duties, it is necessary for those who lack sufficient knowledge of Islamic law and the legal system (Shari'ah) to refer to the opinions of a jurist (faqih). The jurist who issues legal and juridical decrees is known as a "Marja'a taqleed", and the term meaning to follow or imitate their opinion is "taqleed".

There is no disagreement amongst scholars regarding the application of this function by a well-qualified jurist. After all when a person has questions on a particular topic, it is only natural for them to refer these to an expert in this field, not only in the sphere of religion, but in all aspects of life. For this reason, although the jurist must possess certain qualities to assume this role, there is no need for the express permission of an Imam. In other words this function should not be mentioned as an example of the Imam's authority and a type of *Wilayat*.

ii) To Judge (Al-Qada)

It is legally established that a just faqih is able to mediate disputes and judge in legal cases. Imamis believe that this function (*Wilayat al-qada* or al-hukuma) is encompassed within the Imam's divine authority. Hence, only those who have his permission may assume this role. Imam as-Sadiq (pbuh) referred to the administration of justice (hukuma) as a constitutional right and duty of the Imam:

*Beware of the Hukuma (administration of justice). Indeed, al-Hukuma belongs to the Imam who is knowledgeable in matters of judicial decisions (qada) and who is the just one (al-adil) among the Muslims, like the Prophet or his legatee*¹⁷.

Imami jurists commonly agree that this responsibility (*Wilayat al-qada*) is entrusted to the just faqih as a deputy of the Imam.

Hisbiya Affairs (Al-Umur al-Hisbiya)

The Prophet (pbuh) said:

*The sultan is the Wali of the one who does not have a Wali*¹⁸.

According to this hadith, the sultan is the guardian (*Wali*) of those who need a guardian to for a particular

reason. For example, when the father of a minor or an insane person dies. Imami jurists extend this role to a set of affairs that require an authorized guardian to oversee them; these are known as *al-umur al-hisbiya*, and include religious endowments, inheritance and funerals (as well as those mentioned above). Although all Imami jurists accept the legality and necessity of this role, they disagree as to whether or not he is appointed by the *Shari'ah* or because he is naturally the best suited for the role. Some maintain that there is no expressed permission stemming from Islamic traditions to justify the authority of a jurist in such cases (*hisbah*). However, though the *Shari'ah* is silent, this does not mean that issues of *hisbah* do not need to be attended to. And a faqih who has knowledge of the *Shari'ah* and is just and pious, logically has priority over all others in these cases.

These three functions only form a fraction of the Imam's authority; in the history of Imami *Shi'ism*, *marja'aiyya* (authoritative reference) has largely been restricted to these central roles (especially the first). However, the religious authority and duties of an Imam as a guardian (*Wali*) extend far beyond the three functions mentioned above. Those who believe in universal vicegerency (*Wilayat al-amma*) maintain that the role of the faqih is not restricted to merely a few religious duties, but rather he has the same authority as the Imam. He has the right and duty to lead the Shi'a community and undertake the full function and responsibilities of an infallible Imam.

In addition to the administration of justice (*Wilayat al-qada*) and '*hisbah*', the Imam also has the right to exercise governmental, juridical and economic duties. The political nature of these duties consequently implies that the Imam is the leader and ruler of Muslim society (*Wilayat al-siyasiyya*). Those who advocate *Wilayat al-amma* extend the scope of the faqih's authority to the following duties:

1- Political- Devotional (Ibady) Orders and Prayers

Imami fuqaha emphasize that performing certain religious ceremonies, such as leading the prayers of Eid al-Adha and Eid al-Fitr, in addition to the prayer of Jum'ah (Friday), can only be lead by an Imam or one who has been designated by Him. This view presupposes that leading the prayers is a political-religious position and a function of the true Imam. For instance, Shaykh al-Mufid¹⁹ says:

It is well established that every imperfect being needs someone who can discipline him so that he will refrain from evil acts...He should also be the one who will protect Islamic territory and will assemble the people in order to convene the Jum'ah and the Eid prayers²⁰.

In addition, the formal affirmation of the new moon for religiously important occasions (e.g. Shawal for Eid al-Fitr), requires the endorsement of a just and capable Imam (Imam adil).

2-Legal Punishment (Hudud)

It is established in Islamic traditions that the application of legal punishment (hudud) requires the sanction of an Imam. Considering that some categories of legal punishment involve pain, injury or death, whoever is entrusted with this duty, must have the legitimate authority to deal with these issues. The

administration of justice and application of legal punishment obviously require political authority, otherwise they are impossible to enforce both legitimately and consistently. Functions that involve the administration of justice, such as determining compensation (diyat), dividing inheritance and affairs such as retaliation (qisas), also belong to the Imam.

3 – Islamic Taxes

The collection and distribution of taxes is one of the most important functions of any government, therefore those who have the right to fulfil this duty also have political authority (*Wilayat al-siyasiyya*). Sunni jurists generally maintain that a sultan (deputy), who has political power, can receive taxes such as zakat. Imami fuqaha, on the other hand, believe that the Imam has the sole entitlement to receive Islamic taxes (zakat, sadaqa, kharaj) and decide how they should be spent.

4 – Jihad (Holy War) and Defense

Unlike a number of Sunni jurists, who consider fighting unbelievers for the expansion of the Islamic state as a form of “Jihad”. The scope of Jihad is not so broad amongst Imami jurists who, in order to prevent the abuse of this concept by corrupt political authorities, insist that the permission of the Imam is a necessary condition for Jihad. Shaykh Tusi says:

*It is imperative that the Imam should be the one to commence Jihad against unbelievers (kuffar)*²¹.

Sachedina explains why there is no justification for Jihad without permission of the Imam in the Imami point of view:

*The original purpose of Jihad, then according to the Imami, was not preserved under the Caliphate. What had caused the Jihad to drift away from the Qur’anic purpose was the coming to power of unjust and unrighteous authority claiming to undertake Jihad in the name of God. Of the two main purposes of Jihad, namely to call upon the people to respond to God’s guidance, and to protect the basic welfare of the community, the first purpose, according to all the Imami Jurists, required the presence of the just Imam or the person deputized by such an authority. This was to guarantee that Jihad against unbelievers was undertaken strictly for the cause of God*²².

These four categories of authority and function introduce an essential issue in determining the scope of a vicegerent’s authority. If an Imam has delegated his authority and duties entirely to a just and capable jurist (faqih) as his deputy during the period of greater occultation, the guardianship (*Wilayat*) of fuqaha would be universal (amma). Universal guardianship implies that the Islamic society is in need of a *Wali* to lead and organize it’s affairs, regardless of whether an infallible Imam is present or not.

Wilayat al-Faqih can be defined as an authority entrusted to learned fuqaha so that they may direct and advise the Muslim ummah in the absence of an infallible Imam. This authority is derived from the Imam, who is al-*Hujjah* (the proof of God), therefore it is incumbent to obey their commands as the only

legitimate authority. However, there remains some ambiguity surrounding the scope of the authority (*Wilayat*) that has been delegated to the fuqaha.

The concept of *Wilayat* encompasses many degrees of authority. The highest form of authority (*Wilayat*) bestowed upon the faqih is the universal type (*Wilayat al-amma*), whereas the most basic form is embodied in the authority to undertake '*hisbah*' and '*qada*' (the administration of justice). Some people make the mistake of assuming that *Wilayat al-faqih* refers only to the universal authority, when in fact it refers to the total scope of the scholar's vicegerency in the absence of an infallible Imam.

Some Misconceptions

At this point, it is necessary to address two common misconceptions surrounding *Wilayat al-Faqih*. Many people erroneously assume that it is something new and in essence distinguishable from the traditional status of marja' aiyya. This misunderstanding is caused by a lack of attention to the definitions of and the relationship between '*Wilayat*' and '*marja' aiyya*' and the distinction between '*fatwa*' and '*hukm*' (the commands of faqih as *Wali*).

The role of a marja'a taqleed is widely considered to be solely a juridical authority to whom the Muslim community may refer to in the case of religious questions and commandments concerning the practical side of Islam (*fiqhi* questions). However, this definition is not comprehensive; it concentrates exclusively on one of the legitimized functions of a jurist, while overlooking the others. As we mentioned previously, the faqih has at least three significant functions; as an expert in Islamic law and jurisprudence, he is entitled to undertake '*ifta*'. However, as an appointed deputy of the Imam, he has the authority (*Wilayat*) to exercise '*hisbah*' and '*qada*'. Accordingly, every faqih is entitled to issue a decree (*fatwa*) and, at the same time, to be appointed as '*Wali*' to undertake specific functions. When the jurist administers justice or acts as a legal guardian to a '*mawla alayh*' (someone who is without a legal guardian) he is known as a '*Wali*' or '*hakim al-shar*' and when he is referred to in religious (*fiqh*) issues, he is usually called '*marja'a taqleed*'. A necessary distinction must be made between a '*fatwa*' (decree) issued by a faqih in his capacity as a religious authority (marja'a) and a '*hukm*' (order) issued by him as a *Wali* and '*hakim*' (guardian or ruler).

A '*fatwa*' is classified as a decree issued by the jurist based on his deductions from Islamic sources. He attempts to determine the position of the *Shari'ah* and divine commandments with regards to a specific issue, in which his opinion will be adopted by those who submit to his religious authority (muqalid). On the other hand, a '*hukm*' is an order issued by a *Wali* regarding a particular set of circumstances, the Islamic legal system and interests of the Muslims. Therefore, it is not merely due to his deduction from a religious source, though he must respect the *Shari'ah* when issuing a *hukm*. The *hukm* is intended to effectively organize and resolve difficulties within Muslim society.

Another key issue concerns the relationship between the first function of the faqih, which is *ifta*, and the other duties that are subject to his *Wilayat* (guardianship). Theoretically, these two elements seem

independent and entirely separable from one another, but can they really be disassociated?

Suppose that there were one hundred just and capable scholars, who fulfilled the qualities required to assume the role of *Wali* and marja'a. It is not obligatory upon all of them as an 'individual duty' (*wajib al-aini*) to assume responsibility for all three functions of a faqih? The answer is negative. Performing these functions is a 'sufficient necessary' (*wajib al-kefai*), which means that if a number of them were to undertake these three duties, then the others would no longer be obliged to issue a 'fatwa', to judge or to act as a guardian (if the others are meeting the requirements of the community). In conclusion, although ever faqih potentially could become marja'a and *Wali*, only a few of them will effectively assume these functions.

At its highest degree, the universal vicegerency of the jurist (*Wilayat al-amma*) also encompasses political authority (*Wilayat al-siyasiyya*). Some adversaries of the doctrine maintain that the meaning of '*Wilayat*' (guardianship) in Imami jurisprudence is essentially incompatible with political authority. They argue that, according to the Islamic legal system, 'guardianship' requires the existence of a 'mawla alayh' (one who is in need of a guardian), which in definition refers to those who are impotent in their affairs, whereas political authority cannot presuppose that the subjects of a government fall into this category. Therefore the guardianship of a faqih is limited in scope and has no connection to political authority²³.

The term '*Wilayat*' is used in two cases in the Qur'an and Islamic traditions; firstly there are circumstances when a 'mawla alayh' is unable to discharge his or her own affairs (in cases of insanity, incapacity or immaturity) – this is *umur al-hisbah*. The second involves the authority of the Imam to administer justice (*Wilayat al-qada*) and collect taxes. However this case does not presume any disability on behalf of the 'mawla alayh'. Although people are generally able to manage their own private affairs, there remain matters in every society that require the existence of a reliable, credible and just authority to undertake and supervise them. The Qur'an introduces Allah, the Prophet and (according to the Shi'a perspective) the Imams as guardians (*Wali*) over the believers. Clearly these verses consider the believers (mawla alayh) in need of divine guidance and leadership, and not as impotents who need supervision in all of their personal affairs.

The authority and guardianship of the faqih is a social duty, which is delegated to them. Consequently it neither gives them an increased status in humanity, nor decreases the status of people who admit the guardianship of a just and capable faqih. Imam Khomeini says:

By authority we mean governance, the administration of the country and the implementation of the sacred laws of the Shari'ah. This constitutes a serious and difficult duty but does not earn anyone an extraordinary status or raise him above the level of common humanity. In other words, authority here has the meaning of a government, administration and execution of law, contrary to what many people believe, it is not a privilege but a grave responsibility²⁴.

The Historical Background

Universal guardianship (*Wilayat al-amma*) is undoubtedly the most fundamental element of Imami political doctrine in the era of occultation (ghaibat). Therefore, it is essential to understand what position the most learned Imami jurists have historically adopted regarding this concept. Moreover, it is often speciously conceived that *Wilayat al-amma* is a new development in Islamic thought, which has no origins amongst the early Imami jurists. However, a brief survey of its historical background in Imami jurisprudence reveals not only the weakness of this supposition, but it also illustrates that *Wilayat al-amma* is a concept widely endorsed by many outstanding jurists.

When examining a historical account of scientific studies, it is easy to overlook two important points. Firstly, we often assume that our predecessors approached a problem from the same perspective and with the same clarity as we do. However, this expectation is rarely validated with regards to debates on subjects such as politics, which encompass various dimensions that each constitutes an area of specialized research (such as philosophy and ideology).

Therefore it is hardly correct to suppose that political thinkers in the past necessarily followed the same problem or methodology as contemporary intellectuals. Secondly, although scholars today are freely able to write and express their own ideas, this often leads us to mistakenly expect that the social and political climate was the same for previous scholars, who in fact lived under illegitimate and often oppressive governments. They were thus often forced to practice precautionary dissimulation (taqiyyah) and were unable to explicitly state their opinions.

There are two strands of thought amongst the supporters of *Wilayat al-amma*. There are those who explicitly and directly insist that the vicegerency of a faqih is universal. While on the other hand, some scholars maintain that a learned jurist may be entrusted to undertake a number of duties in addition to the primary three of ifta, qada and *hisbah*.

The latter of these two opinions usually occurs in the early period of Shi'a jurisprudence. Until the emergence of the Safawid dynasty in Iran, the Shi'a community existed as a minority, without political power. Hence, the universal authority of a faqih, ruling and political jurisprudence had very little bearing on the circumstances of the Shi'a, which is why the fuqaha devoted less attention to discussing matters of political theory and the duties of a ruler.

When taking into account the opinions of these learned scholars, it is important to recognize that they not only state their personal opinion (ijtihad) concerning the scope a jurist's guardianship, but also maintain that this opinion is in accordance with the general consensus (ijmaa) of the Imami fuqaha. This reinforces the assumption that jurists who were historically silent regarding political issues, such as governance and universal authority, remained so due to the social and political circumstances of the time (taqiyyah).

Regarding the first school of thought regarding *Wilayat al- amma*, one of the most important Imami jurists, al- Muhaqqiq al-Karaki²⁵ says:

*Imami fuqaha have consensus on the point that the fully qualified faqih, known as a mujtahid, is the deputy (nayib) of the infallible ones (peace be upon them) in all the affairs attendant upon the deputyship. Hence, it is obligatory to refer to him in litigation and accept his verdict. If necessary, he can sell the property of the party who refuses to pay what he is due...rather, if it were not for the Wilayat al- amma many of the Shi'a community's affairs and needs would remain undone*²⁶.

Shaykh Muhammad Hassan²⁷, The author of an encyclopedic work in Imami *fiqh*, 'Jawahir al-Kalam' writes:

...carrying out Islamic sentences and implementing religious injunctions is obligatory at the era of occultation. Being the deputy of the Imam (Pbuh) in many cases rests with the fuqaha. The faqih's social status is the same as the Imam. There is no difference between him and the Imam (Pbuh) in this respect.

*[The verdict of] Our fuqaha on this issue [is] unanimous; in their works they frequently underscore the idea of referring to a guardian/governor (hukm) who is the agent and representative of the Absent Imam. If the fuqaha are not to have the general vicegerency, all the affairs of the Shi'a will remain unattended. Those who surprisingly raise objections about the Wilayat al-amma of the faqih, then seem to be ignorant of jurisprudence and the words of the infallible ones; they have not pondered these words and their meanings*²⁸.

Hajj Aqa Reza Hamedani²⁹ also maintains that *Wilayat al- amma* is a unanimous concept amongst Shi'a jurists:

*In any case, there is no doubt that the fuqaha of integrity (Jame al-Sharayeti), who have all the perfect, necessary qualities to undertake the vicegerency are the deputy of the Imam of the time in such matters. Our fuqaha have testified to this in their works. Their statements indicate that they regard the vicegerency of faqih in all matters as indisputable so much so that some of them have taken consensus (Ijmaa) to be the pivotal proof of the faqih's general guardianship (neyabat al-amma)*³⁰.

As we discussed earlier, many jurists attribute duties to the faqih that require him to be entrusted with universal authority. The evidences regarding the appointment of a faqih as a deputy of them Imam cover many chapters of *fiqh*, the explanation of which would require many pages. However, in the interests of our discussion, we will examine only a few of them here. Shaykh al-Mufid (334-413 A.H) asserts that the application of legal punishment (hudud) is one of the key functions of a faqih:

It is the duty of the ruler of Islam (Sultan al-Islam) who is appointed by Almighty God to implement hudud. Sultan al-Islam is the infallible Imams from Muhammad's (Pbuh) family or the rulers and governors (Hukm) who are designated by them. They have entrusted this duty to the fuqaha where possible.

Early Imami jurists applied titles such as ‘sultan al-Islam’, ‘hukm’ and ‘Wali’ to the Imams. Many of these, such as sultan al-Islam, originally belong to the infallibles (Prophet and Imams) and so seldom apply to others. However, the majority of them also refer to those who are the appointed deputies of the Imam as well. For instance, Fakhr al- Muhaqqiqeen³¹ says:

*The meaning of ‘hakim’ here is the just ruler (al- Sultan al-adil) or his deputy. When there is no access to the Sultan or his particular deputy, it is the role of a well-qualified faqih...so when the author (Allamah Hilli) says “when there is no hakim” he means by ‘hakim’ all these three [above]*³².

Muhaqqiq al-Karaki also endorses the above interpretations of ‘hakim’. He writes:

*particular deputy. In the era of occultation, the Imam’s general deputy (al-nayb al-amm) is the well qualified jurist...It should be noted that when the fuqaha use the term (hakim) unconditionally, it exclusively refers to a well qualified faqih*³³.

It is important to remember that ‘judge’ is not synonymous with ‘hakim’. This is because the application and enforcement of legal punishments, in the view of Imami scholars, is delegated to the governor (hakim) and not the judge (qada). Hafs ibn Qiyas asked Imam as-Sadiq (pbuh): “Who is in charge of punishment, the ruler or a judge?” To which the Imam replied:

*“The application of hudud is due to he whom has hukm (who governs)”*³⁴.

This distinction clearly indicates that the application of legal punishments (hudud) requires full political authority; which in turn necessitates universal guardianship (*Wilayat al- amma*). A view that is supported by many Imami jurists, such as al-Karaki:

*The reliable well qualified Jurist who can issue legal decisions is designated by the Imam. Accordingly his rulings are effective and it is obligatory to assist him in the administration of al-Hudud and al-qada, among the people. It is not proper to say that the Jurist is designated for administration of Justice and for giving legal decisions only, and that the Jum’ah prayer is a matter outside the scope of these two responsibilities. Such an opinion is extremely weak because the jurist has been appointed as al-hakim, by the Imams, which is well documented in the traditions*³⁵.

As we discussed, the Jum’ah prayer is a political function, which, in the view of the Imami jurists, belongs to the Imam. Therefore, every Imami jurist who believes that the fuqaha are able to fulfil this function during the period of occultation (ghaibat), would also have admit to the validity of *Wilayat al- amma*.

Moreover, if the authority of the faqih is not confined to the role of legal arbitration and guardianship, then the Imami mujtahid may say that the fuqaha have the authority to collect Islamic taxes, which is an obvious indication of universal authority. The first shaheed (martyr)³⁶ says:

It is said that it is obligatory to give ‘zakat’ to the jurist during the occultation if he asks for it himself or

*through his agents because he is the deputy of the Imam, just as the collector of the taxes is. Rather, however, it is more appropriate to state that his vicegerency on behalf of the Imam is applicable in all those matters in which the Imam himself has authority; whereas the collector is the agent of the Imam only in a particular function*³⁷.

The second shaheed³⁸ also believes that the Islamic taxes (zakat) should be delivered to the Imam, or to the trusted Jurist during occultation. He later explains why the zakat should be given to the faqih:

*One must bear in mind that he (the faqih) is appointed in the interest of the public, and if he were to be dishonest there would occur harm to those who were entitled to receive the zakat*³⁹.

In concluding the historical background of *Wilayat al-amma*, it is necessary to re-emphasize that this doctrine is widely supported by later Imami jurists. Who, explicitly and more clearly than their predecessors, support the universal authority of a faqih. A number of these jurists, and their works, are as follows:

- (1) Mullah Ahmad al-Naraqi, in his work *Awaid al-Ayyam*, chapter 'Wilayat al-fuqaha', Page 529.
- (2) Sayyid Mirfattah al-Maraqi in *al-Anavin* Page.355. Al-Bahr al-Ulum in *Bolqatol al-Faqih*, Volume 3, Page.231.
- (3) Shaykh Abd al-Allah Mamaqani in *Risala al-Anam fi hukm e-amwal al-Imam*, Page 14.
- (4) Mirza al-Nayyini in '*Al-Makaseb wa al-Bai*', edited by Shaykh Muhammad Amali, Volume 1, Page 336.
- (5) Sayyid Muhammad Hussain Borujerdi in *al-Badr al-Zahir fi salat al-Jum'a*, Page 71.
- (6) Sayyid Muhammad Reza Gulpaayigani in '*al-Hedaya ela man Lahu al-Wilayat*', Page 46.

Multiplicity in Wilayat

Although according to Imami political doctrine, authority (*Wilayat*) is bestowed upon a deputy (*Wali*) by the infallible Imam, there is an important distinction between the specific designation of a deputy and the 'general' designation of a number of deputies.

While there was an explicit nomination for each of the Imams to undertake leadership, and for the vicegerency of the four deputies during the minor absence, the guardianship of the jurists during the greater absence is a 'general' designation. This means that no faqih is exclusively appointed as '*Wali*' and deputy; all Imami jurists who are just and qualified in *fiqh* (ijtihad) have the right to exercise the Imam's authority as his deputies. Accordingly, universal authority has been entrusted to many jurists in every age and generation. Inevitably, this multiplicity means that the Imami theory of leadership could be confronted by the problem of disturbances and conflict, as polarization between various sources of

decision-making naturally results in differences and chaos. In the context of the present discussion, it is important to assess how the universal theory of guardianship might address such issues.

In most cases, multiplicity does not present any serious problem regarding the functions of the fuqaha. It is unrealistic to insist that all cases of '*hisbah*' need to be undertaken by a single jurist. Likewise, there is no reason to expect uniformity in '*Marja'aiyya*' and the administration of justice. The fundamental difficulty arising from multiplicity, however, is that of political authority and leadership (*Wilayat al-siyasiyya*).

The best way to approach this concern is to consider the status of the fuqaha who are entitled to political authority. *Wilayat al-Faqih* defines the criteria required of a ruler, and maintains that anyone who fulfils these qualities has the right to govern. In principal, authority (*Wilayat*) does not demand any extra conditions. However, to be practically applied such authority requires suitable political circumstances and the recognition of the people. According to Imami doctrine, if Muslims appoint a just and capable jurist as their leader, then other fuqaha are obliged to support him and obey his orders, so long as he fulfils the qualities of *Wilayat*. This situation is comparable to the relationship between judges; when one is responsible for a specific case, though other judges are entitled in principal to perform the same role, they have no right to interfere in his judgment. Shi'a traditions discuss the appointment of the fuqaha as deputies of the Imam, but they do not endorse or design a particular method to acknowledge or elect one or more jurists who possess the *Wilayat*. Article 107 of the constitution of the Islamic Republic of Iran, suggests the following process:

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 Article 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...they shall elect him as the leader.

The Dominion of the Wali al-Faqih

When considering that *Wilayat al-Faqih* represents the keystone of Imami political doctrine in the Era of Greater Occultation, it is essential that we assess the scope and domain of its authority. For our present subject, we must take into account the power of other religious authorities amongst the Imamis; the marja'ai. Does the *Wali al-Faqih* have authority (*Wilayat*) only over those who accept him as their marja'a, or those who imitate marja'ai that support the idea of *Wilayat al-amma*?

Aside from the relationship between the *Wali al-Faqih* as a political leader and other fuqaha as marja'ai, it is also important to gauge the authority of the *Wali al-Faqih* regarding the *Shari'ah*. Is he only able to issue orders within the framework of the Islamic legal system, or is he fully authorized to make decisions even if they contradict the *Shari'ah*? In other words, is his license as a ruler defined by the *Shari'ah*, or is his authority above the *Shari'ah* and therefore absolute?

We can structure our analysis around two significant aspects; the people's respect for his orders, and his respect for the Islamic legal system (*Shari'ah*). However, before proceeding with this discussion, we should review two important points.

Firstly, unlike Imamate, which is considered as a fundamental aspect of belief (aqeeda) in *Shi'ism*, *Wilayat al-Faqih* is a juridical (*fiqh*) subject matter. What distinguishes a *fiqhi* discussion from a theological (kalam) one, is that while the latter concerns issues of belief (disagreement upon which would render an individual's belief imperfect), the former is legal and thus subject to divergence of opinion even amongst the scholars of a particular Islamic sect (as disagreement in these issues does not invalidate belief). Hence, there can be disagreement on the universal authority of the jurist, as a juridical (*fiqh*) discussion and such disputes are not concerned with faith (iman).

Secondly, a necessary distinction must be made between a fatwa (religious decree) and hukm (order). As previously stated, a decree, deduced from Islamic sources and issued by a qualified faqih – fatwa – is valid and reliable for those who refer to him as their marja'a taqleed (religious authority), thus it is binding upon them to obey his fatwa. However, those who refer to other scholars as religious authorities are not obliged to observe this ruling. But an order (hukm) issued by the *Wali al-Faqih* is binding upon all Muslims, not merely his followers, regardless of how far his political authority might reach. Therefore, a command issued by a jurist as *Wali al-qada* in the administration of justice is obligatory for everyone, even other fuqaha, because the just and capable jurist is appointed as hakim (*Wali*). This opinion is supported by a tradition from Imam as-Sadiq (pbuh), in which Umar ibn Hanzala transmits that the Imam prohibited his followers (Shi'a) to recourse to a tyrannical or illegitimate authority (*taghut*) to resolve their affairs. Instead they are obliged to refer to one who relates the traditions of the Ahlul-Bayt and knows what is lawful and prohibited (i.e. a faqih). Imam as-Sadiq (pbuh) said:

I have appointed him a hakim over you. If such a person orders (judges) according to our ruling and the person concerned does not accept it, then he has shown contempt for the ruling of God and rejects us; and he who rejects us, actually rejects Allah and such a person is close to association [Shirk] with Allah⁴⁰.

In this tradition, Imam as-Sadiq (pbuh) addresses the role of a just faqih (hakim) who has been entrusted with authority by the infallible Imam. According to this hadith, the people are not allowed to recourse to an illegitimate or oppressive authority for the resolution of their problems. Instead they are required to refer to the *Wali* (hakim) and obey his decisions, regardless of whether or not he is their marja'a taqleed.

Such a solution, however, hardly seems convincing for those who do not accept *Wilayat al-amma*. One might argue that the *Wali al-Faqih* issues commands (hukm) based upon his own opinion (fatwa) that the authority of the jurist is universal (*Wilayat al-amma*), while according to the view of another marja'a the scope of a jurist's authority is limited and he is not designated to undertake political affairs. According to this view, the tradition of Umar ibn Hanzala and others do not include these kinds of orders.

However, this reasoning presents obvious problems that extend far beyond the governmental orders (hukm) of a jurist. For instance, when administering justice (*Wilayat al-qada*) a faqih issues an order according to his own religious decree (fatwa), however there is no excuse for people to disregard or disobey his command on the grounds that he is not their marja'a. This is because the authority to judge (al-qada) and the authority to issue decrees (al-ifta) are independent of one another, thus the role of the judge cannot be infringed by the edict of a marja'a (as the marja'a is not the judge of that legal case). Furthermore, although the opponents of *Wilayat al-amma* maintain that the designation of the faqih as the Imam's deputy does not extend to political authority (*Wilayat al-siyasiyya*), this surely cannot imply that if the people elect a just and capable faqih as their leader, instead of an unjust person, that his leadership is somehow illegitimate and people are free to disobey. We will return to this point in the next chapter when examining the authority of a faqih endorsed by '*hisbah*'.

We noted earlier that the debate surrounding the authority of the *Wali al-Faqih* has two significant aspects. The second of these – the relationship between the faqih's commands and *Shari'ah* – is a very new discussion in Imami political jurisprudence, whereas the first aspect has been discussed by many fuqaha. Imam Khomeini was perhaps the first Imami faqih who explicitly and publicly discussed the connection between governmental orders (ahkam al-hukmati) and Islamic laws (ahkam al-shari'). He firmly advocated the absolute authority of the faqih (*Wilayat al-mutlaqa*) and it is essential that we briefly clarify the definition of this term to avoid any misconceptions.

Al-Wilayat al-Mutlaqa

When one first encounters the idea that a jurist has an unlimited and absolute scope of authority (*Wilayat al-mutlaqa*) in issuing governmental orders, it is easy to dismiss the model of political regime as "absolutism", which is defined in the Oxford political dictionary as follows:

*Originally (1733) a theological concept referring to God's total power to decide about salvation. Extended to politics indicating a regime in which the ruler might legitimately decide anything. Usually applied to monarchical regimes of the early modern period*⁴¹.

This misinterpretation often leads to the false assumption that there are no controls, restrictions or limitations upon the powers of the faqih; his authority is unquestionable and he can exert himself without regard to the demands of the *Shari'ah* or the interests of his people. He has no duty to respect the various kinds criteria and standards for his governance.

This is similar to a dictatorial model of government, which is an absolute rule unrestricted by law, constitution or other political, religious or moral factors within the society and state. Clearly this interpretation of absolute authority is not correct even when considering the Prophet (pbuh) and the Infallible Imams. A faqih as *Wali* must meet certain criteria, one of which is justice.

The above conception of *Wilayat al-mutlaqa* obviously contradicts the idea of justice and such a person has no legitimate authority (*Wilayat*) over believers. The precise and correct understanding of '*Wilayat*

al-mutlaqa' has a close relationship to discussion about the nature and various kinds of 'command' (hukm) in Imami Jurisprudence, especially the faqih's injunction as *Wali* (al-hukm al-hukmati) and its position among commands of *Shari'ah*.

i) Divine Laws (Al-Hukm as-Shari')

This refers to a set of rules and commands legislated by God and expressed to people through the Prophet Muhammad and his successors. Hukm al-Shari' is usually divided by Muslim Jurists into two divisions. The first part is called 'al-ahkam al-taklifi' which is the laws of duty and in turn divides into five divisions (obligation, prohibition, desirability, undesirability and permissibility or 'mubah'). The second part is called 'al-ahkam al-waz'i' which establishes specific relationships and situations (waz') that are subject to particular divine laws. For instance, marriage, ownership, purity and uncleanness are all situations that the Islamic legal system endorses and defines in particular matters and circumstances – usually al-hukm al-waz'i is subject to particular laws of duty. Divine laws also are called the first order laws (al-ahkam al-a^Waliya) because deeds and things by themselves – with no regard to temporal and unexpected accidents – are subjects to these laws and legislation of Islam.

ii) The Judge's Command (Al-Hukm al-Qadi)

Even though the legal decision of Judge (faqih) is issued with consideration of the *Shari'ah* and decrees of Islam, it is not a component of the *Shari'ah*. The judge's role is merely the execution (tanfidh) and application of Islamic law to juridical cases. In administration of justice, the faqih as Judge does not deduce Islamic laws rather he attempts to apply the most appropriate laws to the situation.

iii) Governmental Orders (Al-Hukm al-Wilai)

Supporters of universal authority (*Wilayat al-amma*) do not restrict the orders (hukm) of the faqih to merely the administration of justice. As a hakim, the jurist may issue orders and it is incumbent upon all Muslims, even other fuqaha, to obey them. These include his edicts concerning the beginning of Ramadhan or the application of legal penalties (hudud). The best examples of orders that fall into this category are the governmental commands that the faqih may issue as the political leader of a society. The *Wali al-faqih* may issue orders regarding situations that he recognizes as affecting the interests of Islam, Muslims and Islamic laws and values. A situation may arise in which the *Wali al-Faqih* can issue an order based on the interest (maslahat) of the people, even though in principal the action would not otherwise be compulsory in *Shari'ah*.

Two crucial questions arise regarding these orders. The first concerns the nature of the order; whether the governmental command is categorized as the 'first order' of the *Shari'ah*, or as the 'second order' (al-ahkam as-sanavy). The second question concerns the scope of such orders. A faqih may issue an obligatory or prohibitive order regarding matters that are considered permissible (mubah) and for which there is no prior obligation (for doing or not doing it) in Islamic law. However, a dispute arises about

whether or not the faqih may issue orders that disregard the commands of the *Shari'ah*. Since the answer to the latter of these questions emerges from the former, it is necessary to explain what we mean by 'second order' commands (akham as-sanavy).

iv) Al-Hukm al-Awaly and al-Hukm al-Sanavy

The actions that we commit according to our free will are subject to one of the following categories in *Shari'ah*, namely obligation (wajib), prohibition (haraam), desirability (mustahab), undesirability (makruh) and simple permissibility (mubah). These 'first order' laws (al-ahkam al-awaly) are determined by the law giver (hakim) upon considering the essence and natural status of deeds and things. However, in exceptional situations and under circumstances in which people should not or cannot respect previous legislations, new rulings must be issued. These temporal laws are legislated according to the demands made by exceptional situations, and are called laws of 'the second order' (al-ahkam al sanavy).

They are secondary and temporal because people must revert to obeying the first order laws as soon as the exceptional circumstances return to normal. For instance, according to *Shari'ah* it is not permissible for Muslims to eat "carrion" (dead animals) or the meat of animals not ritually slaughtered. It is a first order command, but in a dire situation when a person has nothing to eat at all, God permits him or her to eat such meat, this permission is a second order law. The Qur'an says:

He has only forbidden you what dies of itself, and blood, and flesh of swine, and that over which any other (name) other than (that of) Allah has been invoked, but whoever is driven to necessity, not desiring, nor exceeding the limit, no sin shall be upon him. [Chapter 2, Verse 173]

Fuqaha usually cite 'necessity' (ezterar), damage (zarar), distress and constriction (usr wa haraj), disorder of the Muslim's system (ekhtelal al-nidham) and compulsion (ekrah) as the major exceptional topics that demand and require second order laws, as reasons for reverting to laws of 'the second order'. The prevailing conception amongst Imami Jurists emphasizes that the governmental orders should be issued by the faqih only in one of the aforementioned exceptional situations because al-hukm al-hukmati is but a second order command.

When we consider this opinion, the answer to the second question – which is the relationship between governmental order and *Shari'ah* – is very clear. In a normal situation, the faqih has no right to issue orders in opposition to obligatory (either haraam or wajib) first order laws, even if the interests (maslahat) of the Muslims demands thus. In other words, interest as such cannot justify governmental orders when they are on the contrary with Islamic obligatory laws.

However, situations in which the interest (maslahat) becomes so serious that ignorance of it could cause significant damage, distress and constriction or disorder, would allow the *Wali al-Faqih* to issue these orders.

Ayatollah Khomeini, in a revolutionary view, stated that although the implementation of *Shari'ah* is very

important, it is not the ultimate goal. Islamic laws (*Shari'ah*) serve as a means to achieve the primary aim embodied in the protection of Islam and the extension of Justice. For him the Islamic State is not merely one part of Islam amongst others, but it is Islam itself. Consequently the significance of Islamic laws is overshadowed by the significance of protecting the Islamic system and the interest (*maslahat*) of Islam. He expressed the view during his lectures in Iraq – the seminary of Najaf – years before the Islamic Revolution in Iran.

After the Islamic Revolution in Iran he explored this view more explicitly. In his famous letter to Ayatollah Khamenei (the current *Wali al-Faqih*), he insists that the authority of the Prophet and Imams to govern is not only a first order divine law but also it has priority over others such as praying, fasting, Hajj and so on. He writes:

The government or the absolute guardianship (al- Wilayat al-mutlaqa) that is delegated to the noblest messenger of Allah is the most important divine laws and has priority over all other ordinances of the law. If the powers of the government restricted to the framework of ordinances of the law then the delegation of the authority to the Prophet would be a senseless phenomenon. I have to say that government is a branch of the Prophet's absolute Wilayat and one of the primary (first order) rules of Islam that has priority over all ordinances of the law even praying, fasting and Hajj... The Islamic State could prevent implementation of everything – devotional and non- devotional – that so long as it seems against Islam's interests⁴².

Unlike conditional authority (*Wilayat al-muqayada*) that restricts the right of the faqih for issuing governmental orders solely in permissibility cases (*mubahat*), *Wilayat al- mutlaqa*, by definition, is a juridical view concerning the dominion of the just faqih to issue governmental orders even if it is in opposition with some obligatory Islamic laws.

As has become clear from the current discussion, the meaning of *Wilayat al-mutlaqa* is totally different from 'absolutism' and the establishment of a totalitarian and dictatorial government. Some qualifications and conditions are essential for the *Wali al-Faqih* such as justice, piety and the necessary socio-political perspicacity. So, if he fails to meet one of them, he will be dismissed. In the constitution of Islamic Republic of Iran a group of experts elected by people supervise and control the leader. This constitution in article 111 says:

Whenever the leader becomes incapable of fulfilling his constitutional duties, or loses one of the qualifications mentioned in Article 5 and 109, or it becomes known that he did not possess some of the qualifications initially, he will be dismissed. The authority of determination in this matter with the experts specified in Article 108.

As I indicated before, in Imami Political Jurisprudence '*Wilayat al-mutlaqa*' is a new term. Imami fuqaha usually use other terms such as '*Wilayat al-amma*' and '*neyabat al- Amma*' to refer to the authority of faqih. Imam Khomeini applied the term publicly, then in 1990 it was enshrined in the constitution of Islamic Iran. Article 57 says:

The power of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute religious leader and the leadership of the ummah.

Wilayat al-Faqih and other Ideas of Guardianship

Perhaps Plato was the first political theorist who presented a comprehensive guardianship model of government. In the 'Republic', he states that political knowledge is a supreme art that aims to realize the good of the community. Attaining that knowledge requires serious training. Thus, men and women must be carefully selected and rigorously trained in order to achieve excellence in the art and science of politics. This serious training renders a few of them a class of 'true philosophers'⁴³, who deserve to rule the society.

Therefore, the ideal Republic will come into existence if a class of guardians (Philosopher Kings) rules over it.

In the history of political thought, various interpretations of the guardianship model of the State have been suggested, Marxist-Leninism and all the political ideologies which believe in an organized group of revolutionaries, a vanguard, who possess the sufficient knowledge and commitment to overcome capitalism and to lead the working class to establish a socialist and non-class society are samples of the guardianship political theory.

Obviously, Shi'a political doctrine should be categorized as a guardianship model of government because it believes that only those who have specific qualifications (infallible ones or their deputies) have a right to govern the community. For Imamism the problem of leadership is not the question of people's elections. People have to accept and believe in divinely designated leadership just like the Prophecy in order for it to be practical. Since the fuqaha are generally designated as guardians, the role of the people within the period of occultation increases. They have a duty to acknowledge their governor among the fuqaha directly or through a selected group of fuqaha. Nevertheless, this participation of people does not render *Wilayat al-Faqih* a purely democratic and non-guardianship theory of State. Robert Dahl is quite right when he states that:

No single interpretation can do justice to the variations among the many different visions of guardianship⁴⁴.

However, what he mentions at the beginning of his discussion could be recognized as the central point of the vision of guardianship:

The assumption by democrats that ordinary people are qualified, they, (advocates of guardianship) say ought to be replaced by the opposing proposition that rulership should be entrusted to a minority of persons who are specially qualified to govern by reason of their superior knowledge and virtue⁴⁵.

Indeed, the theory of '*Wilayat al-Faqih*', which is embodied in the Islamic Republic of Iran, as the first actual experience of Shi'a political ideology, is mixed between guardianship and democracy. While the authority of the faqih and the supervision of Islamic laws and values over all political and social functions of the government emphasise the guardianship dimension of this political system, the approval of representative democracy and the participation of people in electing members of the Assembly of Experts

(who choose and can remove the *Wilayat al-Faqih*'), parliament, president and many parts and local councils, show the democratic aspect of this political ideology. Article 56 of the constitution emphasizes people's sovereignty:

Absolute sovereignty over the word and man belongs to God, and it is He who has made man master of his own social destiny. No one can deprive man of this Divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this Divine right in the manner specified in the following Article.

This chapter aimed to clarify the conception of *Wilayat al-faqih* and its historical background amongst Imami jurists. The next chapter will concentrate on the problem of justification and examine how the advocates of this political theory legitimize it.

1. Abdul-Karim Shahrestany, *Al-Melal wal-Nehal*, Cairo, 1956, volume 1, p. 131.
2. Antony Black, *The History of Islamic Political Thought*, p. 41.
3. Ruhollah Khomeini, *Islam and Revolution*, Hamid Algar (tr), Berkeley: Mizan Press, 1981, p. 86.
4. Lewis writes: 'vali and vilayat are the Turkish pronunciation of the active participle and verbal noun of the Arabic root w-l-y, 'to be near' and hence 'to take charge of'; they mean respectively, governor, and governorship or province'. Bernard Lewis, *The Political Language of Islam*, The University of Chicago Press, 1988, no. 22, p. 123.
5. For more information about the verse and some debates that have arisen by the verse among Shi'a and Sunni scholars refer to: Abdul Husayn Sharafud-Din, *Al-Muraja'at*, Yasin T. al-Jibouri (tr), World Ahlul Bayt Islamic League (WABIL), pp. 173-180.
6. Montgomery Watt, *Islamic Political Thought*, pp. 32-33.
7. Ibn Assir, *Al-Nehaya*, Volume 1, p. 315
8. Montgomery Watt, *Islamic Political Thought*, p. 33.
9. Antony Black, *The History of Islamic Political Thought*, p. 84.
10. Antony Black, *The History of Islamic Political Thought*, p. 87.
11. The paragraph is translated in: Ann K. S Lambton, *State and Government in Medieval Islam*, Oxford University Press, 1981, p. 85.
12. Bernard Lewis, *The Political Language of Islam*, p. 134.
13. Antony Black, *The History of Islamic Political Thought*, p. 94.
14. Antony Black, *The History of Islamic Political Thought*, p. 88.
15. Antony Black, *The History of Islamic Political Thought*, p. 104.
16. Antony Black, *The History of Islamic Political Thought*, p. 85.
17. Abdulaziz Sachedina, *The Just Ruler*, Oxford University Press, 1988, p. 129.
18. Muhammad Baqer Majlesi, *Behar al-Anwar* (110 volumes), Tehran, 1985, *Kitab al-Elm*, Chapter 1, Hadith 29.
19. Muhammad ibn Muhammad ibn al-Nu'man, known as Mufid is one of the greatest Imami faqih and theologian. He was born in Dujal, some sixty miles from Baghdad, in the year 949 or 950AD. His basic and elementary training and studies was under his father. He went to Baghdad at the age of twelve. Among his books in fiqh is *al-Muqni'a*, on which Tusi wrote a

commentary–Tahdhib al–Ahkam (one of the four major books of Imami Shi'ism).

[20.](#) Shaykh Al–Mufid, Al–Ershad, Tehran, 1972, p. 674.

[21.](#) Muhammad ibn Hassan Tusi, Al–Mabsut fi Fiqh al Imamiya, Tehran, 1958, Volume 2, p. 9.

[22.](#) Abdulaziz Sachedina, The Just Ruler, p. 110.

[23.](#) Mehdi Haery Yazdi, Hekmat wa Hokumat, p. 177.

[24.](#) Islam and Revolution, pp. 62–63.

[25.](#) Ali ibn Abd al–A'l who is better known as Muhaqqiq al–Karaki or even the second Muhaqqiq–researcher– (after Helli who is famous as the first Muhaqqiq in fiqh) died in 937/1530. He was originally from Jabal Amel, south Lebanon. He like the first and the second shahid (martyr) completed his studies in Sham and Iraq and different centers of Sunni learning before coming to Iran during the reign of the Safavid denasty (Shah Tahmasb). In this period of Iran's history the authority of Imami scholars had been increased and Karaki had a great status in administration of justice. He established a great seminary (Hawza) in Qazvin and Isfahan consequently Iran once again became center of Imami jurisprudence. One of his famous books in fiqh is 'Jame ul–Maqasid' which is a commentary on the book of Allama al Helli–Qawaid.

[26.](#) The articles (al–Rasayel) of Mhaqqiq al–Karaki, edited by Muhammad al–Hassun, the first collection (Al Ressala fi al–Salat ul–Jom'a), Qom, 1409AH, pp, 142, 143.

[27.](#) He was of Arab descent and died in 1849. Shaikh Muhammad spent thirty years to complete his great work (al–Jawahir) which the last print of the book in Iran includes forty three volumes. It is a commentary on the book of Muhaqqiq al–Helli (al–Sharay').

[28.](#) Muhammad Hassan, Jawahir al–Kalam, Tehran: Dar al–Kotob al– Islamiya, 1398AH, Volume 21, pp. 396–397.

[29.](#) Died in 1904 the author of some significant books in Imami jurisprudence such as 'Mesbah al–Faqih.

[30.](#) Hajj Aqa Reza Hamedani, Mesbah al–Faqih, The Chapter of Khums, Volume 14, p. 291.

[31.](#) He is Muhammad the son of Allama Helli. His famous book on fiqh is 'Eidhah al–Fawaid' which is a commentary of his father 's book (al– Qawaid). He died in 771AH.

[32.](#) Fakhr al–Muhaqqiqeen, Eidhah al–Fawaid, Volume 2, p.624.

[33.](#) Al–Jami ul–Maqasid, Volume 11, Kitab ul–wasaya, pp. 266–267.

[34.](#) Shaikh Hur al–A'meli, Muhammad ibn Hassan, Wasael al–Shi'a, Qom: Ahl ul–Bait Institution, 1412 AH, Volume18, p. 220

[35.](#) The Just Ruler, p. 196.

[36.](#) He is Muhammad ibn Makki who was born in south Lebanon–Jabal Amil– in 734AH. Fakhr ul–Mohaqqeqin was one of his teachers. He was martyred as a result of a fatwa issued by a Maliki jurist, supported by Shafei, in the year 786. He has written some significant books in fiqh such as 'Luma'h', 'Durrus', 'Dhikra' and 'Bayan'.

[37.](#) Translated in 'The Just Ruler' from Jawaher al– Kalam, Volume 15, p. 422.

[38.](#) Shaikh Zain ul–Din is one of greatest Shi'a jurists. He was born in 911 AH and was expert in Sunni jurisprudence as well. One of his important works is a commentary on the first Shaheed's work (Luma'h) and it is a strange coincidence that the author and the commentator both were executed and martyred.

[39.](#) Translated in 'The Just Ruler' from Jawaher al– Kalam, Volume 15, p. 422.

[40.](#) Muhammad ibn Hassan al–Tusi, Tahzib al–Ahkam, Kitab ul–Qad'a, Volume 6, p. 218, Hadith 514

[41.](#) Iain McLean, The Concise Oxford Dictionary of Politics, Oxford University Press, 1996, p. 1.

[42.](#) Sahife' Noor (letters and lectures of Ayatollah Khomeini), Volume 20, p. 170.

[43.](#) Grube maintains that Plato does not mean by 'philosopher king' the professional sense that at present the word 'philosopher' purport, he says: 'Plato does not mean that the world should be ruled by pale metaphysicians from the remoteness of their studies, he is maintaining that a statesman needs to be a thinker, a lover of truth, beauty and the Good, with a highly developed sense of values'. Plato, Plato's Republic, G.M.A. Grube (tr), Indianapolis, 1974, n 13, p.133.

[44.](#) Robert Dahl, Democracy and its Critics, Yale University Press, 1989, p 55.

[45.](#) Robert Dahl, Democracy and its Critics, Yale University Press, 1989, p. 52.

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