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The Principles Underlying the General Guardianship of the Jurist

The First Principle: Man is Gregarious by Nature

Man is gregarious by nature and he cannot meet his needs except though socialization and mutual help. However, often with socialization comes a clash of desires and a conflict of ideas, and there comes about a definite need for laws and a power to implement these laws in a just manner, so as to prevent transgression and conflict. This power (to implement laws) is what we mean by government.

This is why we see that the life of mankind, in all its stages- even in the stone age- was never free of a government no matter how small and simple, be it just or unjust. A system, even if it is oppressive, is better than the absence of any system and thus anarchy. The Commander of the Faithful (as) said: *"people must have a leader, whether he is righteous or a transgressor"* 1

There is no doubt that the Imam (as) does not mean to justify the leadership of a transgressor. Rather, he wants to show that it is, according to the intellect, more preferable than anarchy if the choice was only between the two.

The Second Principle: The Rule Belongs Solely to Allah

There is no doubt that Allah, the Exalted, is our Creator and that creation, nurturing and guidance are all in His hands. He is Omniscient of what would benefit His creation and slaves in their worldly and religious affairs. Similarly, the Almighty does not rule except that which would be beneficial for us as well as the system of existence.

No matter what level of knowledge mankind reaches, he will be unable to and will always fall short of fully knowing what would benefit him in both this world and the Hereafter.

Therefore, mankind must submit to Allah, His divine legislation and His just wise laws in all stages of his life. Allah, the Exalted says:

"the rule is only for Allah, He declares the truth, and He is the Best Judge." (***6:57***).

He also says:

"***He who does not rule by what Allah has revealed, they are the disbelievers…He who does not rule by what Allah has revealed, they are the oppressors…He who does not rule by what Allah has revealed, they are the transgressors'"***[2]

The Third Principle: Islamic Jurisprudence is the Constitution of Life, including Government

We discussed in the last chapter the necessity of the Imam and the ruler in most of the fields of jurisprudence, and that Islamic jurisprudence is not a set of individual rules of worship only. Rather, it includes the constitution of life including Islamic government.

It encompasses financial laws– such as in Khums, Zakat and Kharaaj– civil laws– such as in marriage and divorce– military laws– such as in Jihad, border security and rules of war captives– and punitive laws– such as in judgment, sentencing and blood–money.

Thus Islamic jurisprudence is the constitution of the Islamic government in its entirety. Because of this, al–Kashani called one of the chapters in his book 'al–Wafi': 'there is nothing that people need except that there is a reference in the Book or the Sunna for it'[3].

The Fourth Principle: Islamic Government is a Necessary Part of an Islamic Society

The endurance of Islamic jurisprudence necessarily requires there to be an Islamic government which ensures that Islamic jurisprudence is put into practice and which takes up the role of implementing it. Otherwise, the divine laws will be overlooked, as is the current situation in many countries which are 'Islamic' by name.

The Fifth Principle: It is Necessary to Appoint a Leader who will

take up the role of implementing the Islamic Laws in Order to achieve that Aim

The necessity of governments means the necessity of a trusted ruler who is well versed in the divine laws. Al-Fadhl ibn Shaathan narrated from Ali ibn Musa al-Ridha (as): *"a person said: 'why did He appoint guardians and command that they should be obeyed?'*

He (as) said: 'for many reasons. Among them: if He did not place for them an upright, trustworthy, protective Imam the community would have been overwhelmed and religion would have perished. The practices and laws would have been changed; the innovators would have added to the religion and the disbelievers would have subtracted from the religion, and they would have made things ambiguous for the Muslims'"[4]

Since the Islamic Ruler must be the most knowledgeable of people about the laws of Allah and the most just amongst them, there is no doubt that in the presence of an infallible (as), there would be no room for the guardianship of anyone but him. This is why the truthful sect believed in the guardianship of the Commander of the Faithful (as) after the demise of the Prophet (pbuh), and that the Prophet (pbuh) and his infallible successors (as) have the right of general guardianship and the right of complete divine representation. Al-Muhaqqiq al-Tusi says: 'the Imam is a blessing, his appointment is obligatory upon Allah the Exalted in order to achieve the desired aim'[5]. This is all in relation to the time of their presence (as).

The Sixth Principle: it is not Permissible to Suspend Divine Laws in the Era of Occultation

There is no doubt that the laws of Islam do not become abrogated, and there is no doubt that they last till the Resurrection Day. Otherwise, it would mean that the greater period of time was excluded from these laws. It would also lead to the performance of prohibited acts as well as the spread of corruption during the period of occultation, and this is definitely something to be avoided in the view of the Legislator.

The author of al-Jawahir says: '...among the strange things is the doubt that people have about this, it is as if they have not tasted anything from the taste of jurisprudence...and in general the issue is one of the self evident facts that does not need any evidence.'[6]

Therefore, in the period of occultation, and the time when the community is deprived of an infallible ruler, we have two choices. Either we ignore governance- and this goes against the fourth principle because it is ignoring something important which people need in order to organize their current and next life, as was discussed earlier- or we say that the Holy Legislator left it to the community to run their own affairs

as they see fit, according to the doctrine of democracy or dictatorship or other political ideologies that may be common in any place or time.

The latter is invalid like the former, because in both cases an important need of the Muslim community is ignored. Which need is greater than the need for one who would manage the affairs of the community and maintain the order of the Muslim lands during the time of occultation, while maintaining the Islamic laws which cannot be implemented except at the hands of the guardian of the Muslims?

Therefore, no option remains except to specify a legislative ruler: the qualified jurist who is the closest person to the infallible. Because of this, Imam al-Khomeini (may Allah have mercy on him) says: 'that which is a proof for Imamat is in itself a proof for the necessity of governance after the occultation of the Guardian of the Affair, may Allah the Exalted hasten his holy return'7.

It is perhaps because of this that it is often said that the science which is responsible for proving the guardianship of the jurist is theology not jurisprudence.

If one argues: why is it not permissible that the ruler be one of the people with the jurist taking an advisory role only?

The answer would be: the evidence that proves in theology that it is not permissible to give precedence to one with a lower status to one with a higher status applies here also. Umar ibn al-Khattab used to take the advice of the Commander of the Faithful (as) at times, for otherwise there would be no meaning to his words: 'Had it not been for Ali, Umar would have perished'. Despite this, he was a usurper of the right of the Commander of the Faithful (as). Allah, the Exalted, says: "is He then Who guides to the truth more worthy to be followed, or he who himself does not go aright unless he is guided? What then is the matter with you; how do you judge?" 8

Moreover, the task of protecting the Islamic government is not carried out by mere advice, because the ruler who is not a jurist may not adhere to the advice of his advisors, as is the habit of rulers.

The Seventh Principle: The Consecutive Indications for the Necessity of the General Guardianship of the Jurist

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1-The guardianship of the jurist in the roles which are agreed upon among the scholars- such as giving jurisprudential edicts and judging- necessitates the guardianship of the jurist in politics and in running the affairs of the community as well. This is because acting with regards to Khums, judgment and the implementation of judicial sentences is the role of a government.

Thus the qualified jurist during the period of occultation either has general guardianship in representation of the infallible Imam (as) or has no right of representation at all. This is because the wisdom for representation exists for whatever is confirmed to have been the role of the Imam in running the affairs of the community and is not limited to issuing edicts and the authority over Khums.

2-The strong prohibition against referring to the unjust judges and their scholars indicates indirectly that there is strong encouragement towards referring to the just judges and scholars. During the period of occultation, this means nothing except referring to the legislative ruler, who is the qualified jurist.

In other words, there is no guardian for the Muslim community during the period of occultation because the original guardian (atfs) is in occultation, while the one who claims specific representation of the Imam during the major occultation is a liar, and the one who has no right of representation from him (atfs) is a tyrant without any authority of guardianship over the community at all. Therefore, the guardianship of the general representative of the Imam (atfs) is established (as the only remaining sound option).

This general representative is the jurist, because of the definite principle: '*the ruler* (*i.e. the just ruler*) *is the guardian of the one who has no guardian'*, which is understood from some narrations 10.

This principle means that the jurist takes up the role of the guardian because there is no guardian other than him. Analogous to this is the consensus of the jurists without any disagreement that the legislative ruler is the guardian over the one who is not intellectually mature- due to insanity or similar things- and who has no family member who may be a guardian.

The ruler would, for example, have the authority to enter him into a marriage if this was beneficial for him. They have all agreed that the legislative ruler takes the role of the guardian because such a person has no guardian, and they based this on the above-mentioned principle. 11

3-The guardianship of the jurist on minor *Hisbi* affairs indicates, by precedence, his guardianship over government. 12

The Holy Legislator guides towards the performance of beneficial actions and the avoidance of harmful actions in one of the three following ways:

a- He requests that beneficial actions should be performed and that corrupt actions should be avoided from the Muslim individuals in a general, encompassing form, just as He commanded them to pray, give charity and perform other specific obligations.

b- He requests that beneficial actions should be performed and that corrupt actions should be avoided as a substitutive general obligation, just as He commanded to perform the prayer for the deceased as well as other substitutive obligations.

c- He requests that beneficial actions should be performed and that corrupt actions should be avoided without specifying a particular doer for these actions. These are what our jurists call the *Hisbi* (literally: reward or control) affairs, such as appointing a guardian for an orphan who has no guardian, or performing the funeral rites of a deceased person who has no guardian, etc.

Allamah Bahr 'ul-'Uloom said: 'Hisba means proximity, indicating any action with which one intends to gain proximity towards Allah (swt). It refers to any good action which one knows should be performed in the external world according to legislation, but which has no specific person to perform it' 13 The proof for this is the unconditional nature of the Qur'anic ayah: *"and help one another towards goodness and piety"* 14

Our scholars have agreed that the one who takes up these *Hisbi* affairs is the infallible (as) if he is able and present. In the narration of Hobaba al-Walibiya, she narrates: *"I saw the Commander of the Faithful (as) among the enforcers of the law. With him was a whip with two tongues. He would strike with it the ones selling the impermissible types of fish (catfish, eel, zammar)"*15.

The scholars have also agreed that the one who should take up these responsibilities during the period of occultation is the jurist or his representative and that this is not permissible for anyone else.

There is also no doubt that one of the most important things which we know the Legislator wants to occur in the external world is the Islamic government. If we then assume that He had not appointed anyone to take up this affair specifically during the period of occultation, then surely it would be one of the *Hisbi* affairs which is one of the tasks of the jurist, and in fact the most important one.

Imam al-Khomeini said: 'maintaining the order, defending the borders of the Muslims, protecting their youth from deviating from Islam, and stopping the spread of anti-Islamic propaganda and similar tasks are among the most clear of the *Hisbi* issues, and these goals cannot be achieved except by the formation of a just Islamic state. Thus even if we do not consider the evidence for Guardianship 16, there is no doubt that the ones that we are certain have the authority to perform this duty are the just jurists'. 17

1. Nahjul Balagha, Sermon 40
2. Refer to ayah 5:44-45-47
3. al-Wâfi,1: 205-265
4. Ilalul Sharai', 1:253
5. Kashful Murad: 490
6. (Jawahirul Kalam, 21:397)
7. Al Bay', 2:619
8. Refer to ayah 10: 35
9. A consecutive indication is an indirect necessary indication. For example, when you say this room has a ceiling, its consecutive indication is that it necessarily has walls too
10. Wasailul Shia, 22:158, The evidence indicating that the general representative of the Imam (as) is the qualified jurist will

come in the next section.

11. Jawahirul Kalam, 29:19

12. This proof is based on the assumption that the evidence indicating that the guardianship of the jurist is a substitutive obligation is not complete. Otherwise, and this is what is correct, there is no need for it.

13. Bolghatul Faqeeh, 3:290

14. Refer to Ayah 5:2

15. Wasailul Shia

16. The evidence for this will come in the next chapter.

17. al Bay', 2:665

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