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Changing Knowledge and Authority in Islam

The Innovative Political Ideas and Influence of Mullā Muḥammad Kāẓim Khurāsānī

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In the Name of God

I. Introduction

Mullā Muḥammad Kāẓim Khurāsānī (1839 – 1911), also known as Ākhund Khurāsānī (the cleric from Khurāsān), is one of the most outstanding scholars of the world of Islam in the recent century. Over one thousand jurisprudents (*mujtahids*) have been trained in his classes in the holy city of Najaf. His book *Kifāya al-Uṣūl* has so far been the most reliable book in the principles of jurisprudence (*uṣūl al-fiqh*) in the Shi'ite seminary schools and the most important course book in this area. Khurāsānī proposed a number of new and innovative opinions and initiatives on the principles of jurisprudence.

Within the last decade of his life, Khurāsānī was one of the three prominent Shi'ite authorities of imitation (*marja' al-taqlīd*),[1] and during the Constitutionalism (*Mashrūṭiyyat*) movement in Iran, he was the most high ranking religious scholar both in theory and in practice. In politics, he put forward such innovative opinions that he could be considered the founder of a political school, the one which so far has been the prevailing school in the seminary school of the holy city of Najaf. Khurāsānī's political school has been much ignored[2] although it has been of high importance. His failure to publish a separate book has been among the reasons for this prevailing ignorance. While the two valuable treatises *al-La'ālī al-Marbūṭa fī Wujūb al-Mashrūṭa* by Shaykh Muḥammad Ismā'īl Maḥallātī and *Tanbīh al-Umma wa Tanzīh al-Milla* by Mīrzā Muḥammad Ḥusayn Nā'īnī, two high ranking scholars, are known to have been influenced by the profound opinions of this pioneer of Constitutionalism movement. Extracting all innovative opinions of Khurāsānī requires publishing all of his works.

In the present article, the most important of his innovations and modern political opinions are introduced and critically analyzed. An effort is made to compare his opinions with those of the contemporary scholars as well as with the important Shi'ite opinion in order to further show the value and reliability of his opinion.

II. The Scope of the Guardianship (*wilāya*) of the Infallibles

The Prophet to all Muslims and the twelve Imams to the Shi'ites are infallible. The scope of the authorities of the Holy Prophet and the Imams has been one of the major questions in political thought in Islam. Apart from some certain cases known as "exclusive rights of the Prophet," there remains a question as to whether the Prophet and the Imams after him have more authorities in public domain than others. In other words, in the legal aspect of politics, have specific rights been pre-planned for the Infallibles? The prominent opinion in this regard is the universality of the Prophet and the Imams' guardianship (*wilāya*), that is, all their positive and negative commands (*awāmir* and *nawāhī*), including canonical, common law (*'urf*), and private and public judgments, are binding, have superior authority over people than people themselves, and have absolute authority in people's affairs[3].

Khurāsānī categorizes people's affairs into two areas: first, public issues, that is, those issues on which people refer to their chiefs or governments and those which are also considered political and universal issues, and second, private issues or particular issues belonging to people. In this area some religious judgments (*aḥkām*) such as owner-

ship, marriage or inheritance have been laid down by the religion. To Khurāsānī, observing these canonical judgments is obligatory for all—even for the Prophet or for the Imams. The life of the Prophet and the tradition (*sunna*) of the Imams indicate that they accurately observed the canonical sanctuary for the private lives of people. In the first area, the public domain, the Prophet and the Imams had the guardianship (*wilāya*), while in the second they are not proved to have had such guardianship. Therefore, to Khurāsānī, the authority of the Infallibles is limited to the usual general and political issues; and the absolute guardianship (*wilāya muṭlaqa*), over the lives, wealth and families of people as well as unusual authority cannot be proved. Therefore, unlike the others, Khurāsānī does not accept "the Infallibles' absolute guardianship," but "the Infallibles' general guardianship," that is, guardianship in public domain within the framework of religion (*shar'*). He recognizes no specific right for them in the second area and believes that everyone is equal before the canonical judgments (*aḥkām*). This means that the absolute guardianship belongs to God only, and any type of human guardianship and authority is limited to observing the divine laws, as the Prophet and the Imams always observed the sanctuary of the Law (*sharī'a*) for the private lives of people. Therefore, the "absolute human guardianship" (*wilāya muṭlaqa basharī*) is forbidden. The "absolute guardianship" (*wilāya muṭlaqa*) exclusively belongs to God and no man even the Prophet enjoys such extensive authorities.

Khurāsānī is the first jurisprudent (*faqīh*)—as a follower of the Imams—to state that absolute guardianship belongs to God and reject the absolute human guardianship. It is a bold opinion, which has consequences in other religious political issues such as the guardianship of the jurisprudent (*wilāya al-faqīh*).

Table 1
A comparison between Khurāsānī's opinion and the famous opinion on the scope of the Guardianship of the Infallibles

The famous opinion	Absolute guardianship of the Prophet and the Imams over the lives and wealth of people
Khurāsānī's opinion	Absolute guardianship belongs to God; absolute human authority is rejected; the Prophet and the Imams have general guardianship (guardianship limited to canonical Judgments)

III. The Infallibility of the Ruler: the Main Condition of a Lawful (*mashrūʿa*) Government

Muslims regard the Prophet's government as the best example of a lawful government. The Sunnis consider the Orthodox Caliphs (*khulafā' rāshidūn*) in the same way, while the Shi'ites believe that the government of the Imams was as such.

To the Shi'ites, the legitimacy of the political power depends upon such conditions as the ruler's being infallible and appointed by God, while Sunnis do not recognize this condition. Depending upon the above basis, the Shi'ites considers most rulers usurpers and tyrannical. As the Safavid and Qajarian Shi'ite rulers came to power in Iran—who were neither infallible nor just—two solutions could be extracted among the opinions of the jurisprudents of that time to justify the said case, that is, the legitimacy of the political rule of Shi'ite rulers.

First: the rule of an authoritative Muslim regardless of how they have come to the throne. If he has the authority required to govern a society and defend Muslims against aliens, respects the appearances of the Law (*sharīʿa*), recognizes the influence and power of the jurisprudents in religious affairs, the policies and interests of public could be vested upon him, and thus he will be guarding Islam besides the jurisprudents, and he is not required to be given power and authority by the jurisprudents, or even ask for their permission. On the contrary, sometimes it is the jurisprudents who are appointed religious positions by the rulers(5).

Second: a ruler with the permission of a fully authorized (*jāmiʿ al-sharāʾiṭ*) jurisprudent. According to the opinion "the general guardianship delivered to the jurisprudent," the jurisprudent is not required to directly govern and control the society, but he can allow a Muslim ruler to engender prosperity in the society and its policies(6). Like the previous one, the present solution is to justify the case, and the said permission is superficial, since we know that no ruler was appointed by the jurisprudent. So, can such a government that has gained legitimacy in either of these two ways be called legitimate rule or lawful rule or Islamic government? This was the major question during the Constitutionalism (*Mashrūṭiyyat*) period among both the advocates and opponents of Constitutionalism. The opponents of Constitutionalism introduced themselves as the advocates of a "lawful government" and called the despotic rule of Muḥammad 'Alī Shah (king) of Qajar Islamic and his commands religiously binding(7). Some advocates of Constitutionalism added the term lawful to constitutional government and called themselves the advocates of a lawful constitutional government(8). In such a chaotic atmosphere, Khurāsānī offered a different opinion(9). He considered the despotic rule as illegal on one hand and opposed considering constitutional government lawful on the other, though he did not regard the constitutional

government as illegal. He submited a new classification of governments. Governments are either lawful or unlawful. Lawful governments are exclusively in hand of the Infallibles, and during Imam Mahdi's occultation, it is in abeyance. The idea of lawful governments being in the hand of the Infallibles and its abeyance in the occultation time is among the requirements of the Imami (followers of the Imams) school.

Khurāsānī divides unlawful governments into two types: just and oppressive. An example of a just unlawful government is constitutional government, and absolute, totalitarian, and despotic governments are examples of oppressive unlawful governments. By "lawful government" (*ḥukūma mashrū'a*), Khurāsānī does not mean a religiously legal and legitimate one, since to him, just governments fall under the category of unlawful but religiously authorized governments. To him the term "lawful government" means canonical government, religious government or Islamic government, that is, a government that represents God, is affiliated to religion, and is assigned by God. Khurāsānī keeps the relation between lawful government and the rule of the Infallibles, but rejects the relation between just government and the rule of the Infallibles. To him "just" could be either infallible or fallible. He considers the absolute rule of the fallibles both illegitimate and unlawful. Khurāsānī rejects both previous ways, and in the absence of the Prophet and the Imams, he claims that justice means legitimacy of governments. In this regard, he was not in accordancd with the advocates of Constitutionalism; for instance, unlike Khurāsānī, Nā'īnī recognized three types of legitimate governments: The rule of the Infallibles, the direct rule of the jurisprudents, and the just constitutional government with the permission of the jurisprudents. Nā'īnī made no distinction between lawful (*mashrū'a*) and legitimate (*mashrū'*) governments[10].

Table 2
A Comparison between the opinions of Khurāsānī and Na'īnī on different governments

<table>
<tr><td colspan="4">Khurāsānī's opinion</td><td colspan="2">Nā'īnī's opinion</td></tr>
<tr><td>Lawful</td><td colspan="3">Exclusive to the rule of the Infallibles</td><td></td><td>The government of the Infallibles</td></tr>
<tr><td rowspan="4">Unlawful</td><td rowspan="2">Legitimate</td><td rowspan="2">Just</td><td rowspan="2">Like Constitutional governments</td><td rowspan="2">Legitimate</td><td>The direct government of the jurisprudents</td></tr>
<tr><td>Constitutional government with the permission of jurisprudents</td></tr>
<tr><td rowspan="2">Illegitimate</td><td rowspan="2">Oppressive</td><td rowspan="2">Like totalitarian governments</td><td rowspan="2">Illegitimate</td><td>Just government without the permission of jurisprudents</td></tr>
<tr><td>Oppressive (despotic) governments</td></tr>
</table>

The way Khurāsānī argued in rejecting the absolute human guardianship raises the question "Is the Prophet or the Imam's policymaking a human affair following an ordinary human method or is it derived from the Divine knowledge (*'ilm al-ghayb*) and being infallible?" In the former case, the lawful government being exclusive to the Infallibles is not logical, since the Infallible's policymaking like their judgments is based on canonical Judgments and human limitations; however, in the latter—involving Imams' Divine knowledge in their policymaking—it is reasonable to say that lawful government exclusively belongs to the Infallibles. Unfortunately the important issue of the Infallibles' policymaking has not been adequately studied and considered upon. Despite the fact that his opinion is consistent with the former case, it is not easy to attribute such opinion to him.

IV. The Supervision of the Jurisprudents over Legislation

The role of the jurisprudent in public domain should be discussed from three angles: First, the role of the jurisprudent in judgment; second, the role of the jurisprudent in legislation, and third, the role of the jurisprudent in governing the society and managing the public domain, which is equal to the role of executive power or the presidents of modern governments. There is no necessary inter-relationship among these three issues and it is possible to assume different roles for the jurisprudent in these issues.

In the first area, that is, in judgment, Khurāsānī treats the issue as the jurisprudents usually do, and considers the appointment of a just jurisprudent to judgment depending upon the reliable religious arguments, as most jurisprudents do[11]. To him, judgment in religious matters exclusively belongs to the jurisprudents.

In these types of religious judgments, usual and customary law (*'urf*) governing judgments, such as appeals, does not apply[12]. Khurāsānī assumes the right to lay down criminal law in religious matters to be out of the scope of functions of the parliament[13]. Comparing Mullā Muḥammad Kāẓim Khurāsānī and Sayyid Muḥammad Kāẓim Ṭabāṭabā'ī-Yazdī[14], the two great religious figures, one an advocate and the other an opponent of Constitutionalism, shows that their opinions were the same both on the issue of the judgment of a jurisprudent and the non-judgment of a non-jurisprudent. The Shi'ite jurisprudents assume judgment to be the exclusive authorities of the jurisprudent and regard jurisprudence (*fiqh*) as independent of modern law and legal procedure (*ā'īn-i dādrasī*). The vague division of judicial matters into religious and customary grievances in public domain, which entered into the amendment of the Constitutions of Constitutionalism under the pressure of the jurisprudents, could not last long. How can the Law (*sharī'a*)

which, as the jurisprudents claim, has predicted a religious judgments (*ḥukm shar'ī*) for any situation can admit such division? Besides, who has the authority to distinguish the religious matters from the common issues in case any argument happens? What are the differences between the verdicts of the judiciary and the religious verdicts or judgments of other chapters in jurisprudence? Why is it that non-judicial laws adopted by the parliament members and approved under the supervision of the board of authorities are legitimate while in judicial laws the parliament plays no role? Moreover what is exclusive to the jurisprudent due to the expertise is inferring the general canonical judgments from the four detailed proofs, but the consistence between the inferred canonical judgment and the issue in litigations requires legal knowledge and criminal experience more than the authority and power of jurisprudent (*faqāha*). This means that (in the latter) the authority and power of jurisprudent (*faqāha*) of the judge is not considered. Like the other scholars, he considers judgment the exclusive right of the jurisprudents or exclusive obligations of the authorities, and has put forward no new opinion, and deficiencies in the other jurisprudents' opinion—as explained above—applies to him too.

But as for the role of the jurisprudents in legislation, at the time of Constitutionalism, there had been little difference between legal and canonical verdicts. As modernity entered the main lands, the necessity of legislation and the difference between canonical law and customary law were gradually put forward. Two completely different opinions were put forward by the jurisprudents.

The first opinion: law is nothing but canonical judgments and Muslims do not need to legislate laws. The authorities should implement and infer from the canonical judgments. So no one but the jurisprudent is eligible to do so and any other inferences from the law means that Islam is incomplete. Canonical laws are not incomplete so no legislation by non-authorities could complete it. The prominent figure holding this opinion is Shaykh Faḍlullāh Nūrī[15].

The second opinion: the laws required for governing a society are of two types. First, obligations and the matters canonically prohibited, laid down in the context of religion as stipulations and applicable from canonical laws to customary laws. Second, affairs not laid down which often fall under the category of the permitted (*mujāz*) and follow the conditions and circumstances in times and places and are laid down through consultation among experts—most political issues fall under the second category. So the law is laid down by the representatives of the people, among whom may be some authorities of a religious society, but not all the parliament members need to be religious authorities. Such a parliament should include experts, provided that they are the representatives of the people. However, since the laws in an Islamic society should not be inconsistent with canoni-

cal judgments believed by people, there should be a board of jurisprudents — approved by the authorities of imitation (*marāji'*) and elected by the parliament members or being randomly selected — which investigates the enactments of the parliament on the basis of their consistency with canonical judgments and returns them to the parliament to be amended in case they find them inconsistent. So, in this regard it is necessary that the jurisprudents supervise the process of legislation. It is crystal clear that in this particular case, the jurisprudents have no right to legislation and have no authority but to investigate the consistency of the laws with the Law.

Khurāsānī advocates the second viewpoint(16) and emphasizes the necessity of supervision over legislation by the board of jurisprudents. Since the first viewpoint cannot practically impose itself on the society, it surrenders to the second viewpoint and accepts it as the minimum requirement for accepting the customary constitutional law(17). The manners of supervision of the jurisprudents over legislation are to be considered upon, which had been ignored in Khurāsānī 's works but Nā'īnī took some of them into account(18). I have attended to them in a separate article(19).

V. Denying the Guardianship of the Jurisprudent

What is the role of the jurisprudents in governing a society and its public domain? Do the jurisprudents have the special right to dominate over the public domain? Is it possible to interfere in this area without prior permission of the jurisprudents (*mujtahids*)? If jurisprudence is the main quality to manage the area of public domain, and people are religiously obligated to adapt to the opinions of the jurisprudents, then we have acknowledged the theory of the guardianship of the jurisprudent. The specific right of the jurisprudents in politics, or the issue of the guardianship of the jurisprudent, was put forward when both abstract and concrete conditions for it to be accepted were provided.

Increasing the number of the Shi'ites to a majority, decreasing the power of the kings, and the dominance of the Uṣūlī over the Akhbārī in seminary schools are to be considered upon. The "guardianship of the jurisprudent" was first put forward by Mullā Aḥmad Narāqī (1764-1824) in his book *'Awā'id al-Ayyām*(20). The jurisprudents fall under two categories after his time. One group accepts the general guardianship of the jurisprudent as he did. Shaykh Muḥammad Ḥasan Najafī, the author of the outstanding book *Jawāhir al-Kalām*, considers it a requirement of jurisprudence and regards anyone who denies it as the one who has not recognized jurisprudence(21).

On the contrary, some jurisprudents such as Shaykh Murtaḍā Anṣārī (1793 – 1860)

in the book *al-Makāsib* find the religious proofs inadequate to prove the general guardianship of the jurisprudent[22]. On the issue of the guardianship of the jurisprudent, Khurāsānī follows his master Anṣarī[23]. He is the first jurisprudent to have criticize every traditional proof and proves why none of them approves the general guardianship of the jurisprudent. His criticisms on the seven traditions (*aḥādīth*) are considered the first criticisms on those traditions (*aḥādīth*) approving the guardianship of the jurisprudent. All these criticisms have been acknowledged by his students, who have been the prominent jurisprudents in the Najaf seminary school after him[24].

At that time Khurāsānī did not infer the guardianship of the jurisprudent from the body of available proofs, yet he had the utmost religious authority and power. Although he was the supreme advocate of a political movement and most effective in the overthrow of the rule of Muḥammad 'Alī Shah of Qajar, he insisted that the general guardianship of the jurisprudent lacked reliable religious proof. Considering his outstanding background in political campaigns, we can strongly claim that Khurāsānī has been the most challenging jurisprudent who has denied the guardianship of the jurisprudent. He inferred the religious obligation to fight tyranny in the Constitutionalism movement that was advocating justice, from other cases of jurisprudence such as "enjoining what is right" (*amr bih ma'rūf*) and "forbidding what is wrong" (*nahy az munkar*) and not from the guardianship of the jurisprudent.

The denial by Khurāsānī of the general guardianship of the jurisprudent means that he has not assigned a specific right to jurisprudents in politics. That is, firstly he does not assume any direct key role in the society for the jurisprudents that has been assigned to them as a religious obligation. Secondly, he does not believe that gaining political positions is conditioned by prior religious permission from the jurisprudents; thirdly, he does not assume any specific right of the jurisprudents to religious supervision over the executive affairs and policies of the society. To him, jurisprudents and non-jurisprudents are alike in determining political destiny of the society. To deny the general guardianship of the jurisprudent, it is required to acknowledge that jurisprudence is not necessary in managing a society. The jurisprudence of a jurisprudent brings him no superiority over other people in managing the public domain of a society. Being an expert in inferring general judgments from religious proofs does not guarantee an exact recognition of detailed customary issues or applying the general guardianship to detailed issues. Khurāsānī has denied all these three types of guardianship of the jurisprudent.

First: denying the absolute guardianship of the jurisprudent as having the authority to capture people's lives and wealth beyond what has been stipulated in primary and secondary canonical rules and to do whatever the absolute jurisprudent deems necessary

even though that may mean abandoning the obligations (*tark-i awāmir*) and acting the forbidden (*'amal bih nawāhī*) to accomodate the expediency of the regime. He does not believe in any absolute human guardianship and considers any human guardianship restricted. In his historical letter to the Shah (king) of the time, Khurāsānī regarded restricting and limiting the powers of the ruler as necessary in Islam and announced that having absolute power in religion is a wrong innovation except for the Infallibles. Khurāsānī is the first to have rejected the absolute guardianship of non-infallibles so strongly(25). It is crystal clear that a jurisprudent being the absolute authority does not decrease its ugliness and prohibition.

Second: denying the general guardianship of the jurisprudent as having the authority to dominate public domain within the framework of canonical judgments or in all religiously authorized affairs. He believes that religious proofs are inadequate to prove the general guardianship of the jurisprudent.

Third: denying the guardianship of the jurisprudent in probate matters. Probate matters means those matters which should by no means be abandoned and in case they are done by anyone, the others are left not to do anymore, while abandoning such duties means a sin committed by the public. Most jurisprudents believe in this type of guardianship of the jurisprudent, contending that it is within the authority of the Islamic judge as probate matters typically are non-political and related to social affairs. But Khurāsānī does not even believe in the guardianship of the jurisprudent in probate matters and regards the proofs to prove the least degrees of guardianship of the jurisprudent as inadequate. Instead of leaving probate matters to the jurisprudents, Khurāsānī introduces the wise Muslims and trustworthy believers as being responsible for them(26). He is the first jurisprudent to have denied all the three levels of guardianship of the jurisprudent. The idea of denying the guardianship of the jurisprudent was followed by such jurisprudents as Sayyid Muḥsin Ḥakīm, Sayyid Aḥmad Khānsārī and Sayyid Abū al-Qāsim Khu'ī(27).

But there still remains a forth level regarding the specific right of the jurisprudents, which is weaker than the guardianship of the jurisprudent in probate matters and cannot be attained by the traditional proofs. But in this area (probate matters) the only people who probably have the religious authority are the jurisprudents. The solution proposed by jurisprudence, which is called the authority of the jurisprudent in probate matters (in the least form of authority in matters), prioritizes the jurisprudents over the others if conditions are provided.

Any authority in this regard is forbidden without prior permission by the jurisprudent. If we generalize the applicability of probate matters, which in the past were applied only to orphans, to such matters as general and political issues, then due to the forth level,

there will be a specific right for the jurisprudents in public domain even if the first three levels of guardianship of the jurisprudent are denied.

In probate matters, Khurāsānī has two different opinions. In his earlier work, he criticizes the adequacy of all proofs of the guardianship of the jurisprudent, but accepts the forth level, the authority of the jurisprudent in probate matters in the least form of it (*qadr-i mutayaqqin*)[28]. But in his latter work, in explaining the obligation for all Muslims, he states that probate matters during the occultation of Imam Mahdi are delegated and delivered to the wise Muslims and trustworthy believers[29]. In other words, he firstly promotes probate matters to general and political issues and secondly, in such issues, he assumes no priority for the jurisprudents either in the guardianship or in the authority in the least form of it (*qadr-i mutayaqqin*). Therefore Khurāsānī recognizes no specific right for the jurisprudents. He absolutely denies the guardianship of the jurisprudent as well as the priority of the jurisprudents in managing public domain. Among the Shi'ite jurisprudents, Khurāsānī assumes the least specific right for the jurisprudents in public domain. He is exactly on the other end of the extreme of Āyatullāh Khumaynī, who among the Shi'ite jurisprudents, assumes the most specific right for the jurisprudents, which means the absolute guardianship with the same authority that the Prophet and the Imams had in public domain beyond the customary canonical judgments[30].

This is the authority Khurāsānī does not assume even for the Prophet and the Imams. He believes that it only belongs to the holy essence of Divinity, and has claimed that it is a wrong innovation to assume that the absolute authority for non-infallibles is of judgments of the religion.

Investigating the opinions of the opponents of Constitutionalism indicates that none of them believed in the general guardianship of the jurisprudent or the rule of the jurisprudents, and limited their authority to probate matters (in its traditional meaning) either in the guardianship or in their authority in the least form (*qadr-i mutayaqqin*)[31]. In addition, a lawful government to them never meant the guardianship of the jurisprudent or the direct rule of the jurisprudent.

Among the advocates and the opponents of Constitutionalism, three viewpoints generally appeared:

First: the guardianship of the jurisprudent in probate matters, but with the extensive authority in probate matters, which includes political and public domain. But none of those jurisprudents who held this view accepted the direct guardianship of the jurisprudent in public domain. They talked only about the necessity of acquiring the jurisprudents' permission in public domain. Nā'īnī is the most prominent figure of this thought and *Tanbīh al-Umma* best indicates that[32].

Second: the authority of the jurisprudent in probate matters in the least form of authority (*qadr-i mutayaqqin*), which is a former opinion of Khurāsānī in *Makāsib*. According to this opinion, the authority of the jurisprudent is less than the guardianship of the jurisprudent but like the guardianship of the jurisprudent, resulting in the priority of the jurisprudent over the other people as well as having specific right.

Third: the absolute rejection of the guardianship of the jurisprudent and the rejection of the priority of the jurisprudent in probate matters (in its extensive form including public domain) and the recognition of the right of the public, wise Muslims and trustworthy believers in probate matters. This is the later and final opinion of Khurāsānī and the basis of his political approach.

Table 3
A comparison of the opinions of the jurisprudents living in the recent one hundred and fifty years on the jurisprudents' specific right and on the guardianship of the jurisprudents

<table>
<tr><td></td><td></td><td>Absolute Guardianship of the Jurisprudent</td><td>Āyatullāh Khumaynī's opinion</td></tr>
<tr><td rowspan="3">Jurisprudents' specific right in managing public domain</td><td rowspan="2">Guardianship of the Jurisprudent</td><td>General Guardianship of the Gurisprudent</td><td>Opinions of Narāqī & the author of Jawāhir</td></tr>
<tr><td>Guardianship of the Jurisprudent in probate matters</td><td>Mīrzā Nā'īnī's opinion</td></tr>
<tr><td>Authority of the Jurisprudent in probate matters in its least form</td><td colspan="2">Sayyid Muḥsin Ḥakīm, Sayyid Aḥmad Khānsari, and Sayyid Abū al-Qāisim Khū'ī's opinions</td></tr>
<tr><td>Absolute rejection of the Jurisprudents' specific rights in managing public domain</td><td colspan="3">Innovative opinion of Mullā Muḥammad Kāẓim Khurāsānī</td></tr>
</table>

In brief, in the three above mentioned areas, Khurāsānī firstly considers judgment as a specific right for jurisprudents; secondly, he does not regard legislation as an obligation for the jurisprudents but their supervision over legislation as necessary, so that no law enters an Islamic society against the religion; and thirdly, he denies specific right for the jurisprudents in managing public domain, that is, on the one hand he denies different types of guardianship, and on the other, assumes no priority for the jurisprudents over the

others in having the authority in probate matters in its least form (*az bāb-i qadr-i mutayaqqin*).

Table 4
The role of the jurisprudents in politics according to Khurāsānī

Judgment	Absolutely the jurisprudents' specific right
Legislation	Jurisprudents' specific right in supervision over legislation in order to prevent laws inconsistent with the religion (Law) from being passed
Managing public domain	Absolute rejection of the jurisprudents' specific right and rejection of all levels of guardianship of the jurisprudent

The absolute rejection of the jurisprudents' specific right in managing public domain makes it possible for all people to participate. On this basis, Khurāsānī announced his historical saying: "During the occultation of Imam Mahdi, the government belongs to the public."

This statement is the foundation of democracy in an Islamic society. To elaborate on this issue, another article is required. In general, Mullā Muḥammad Kāẓim Khurāsānī and the other two authorities of his time are considered the pioneering founders of democracy in Shi'ite thought.

Footnotes

(1) Two other authorities of imitation (*marāji'*) were Mīrzā Ḥusayn Tihrānī and Shaykh 'Abdullāh Māzandarānī.

(2) This author is writing a separate book entitled *The Political School of Khurāsānī*, which contains the critical collection of all works related to the policies of Khurāsānī besides a critical analysis of the innovative opinions of Mullā Muḥammad Kāẓim Khurāsānī. The first discussion in the book was read in a meeting on investigating the theoretical and social bases of Constitutionalism in Iran, entitled "*Andīshih-yi Siyāsī-yi Ākhund Khurāsānī*" [Political Thought of Ākhund Khurāsānī]. This meeting was held on December 29, 2003, in Tehran University, on the occasion of the commemoration of Āyatullāh Muḥammad Kāẓim Khurāsānī and the paper was published in *Āftāb* monthly (Tehran), Issue 31 (January 2004), pp. 94-107.

(3) Shaykh Murtaḍā Anṣārī in his book *al-Makāsib*, Vol. 2 (Beirut), p. 46; Mīrzā Nā'īnī in the book *Ta'līqa 'alā al-Makāsib*, authored by his student Muḥammad Taqī Āmulī, Vol. 2 (Tehran, 1952), p. 332; Shaykh Muḥammad Ḥusayn Gharavī Isfahānī in his book *Ḥāshiyya al-*

Makāsib, Vol. 1 (Tehran, lithograph), p. 212; and also Shaykh Ismā'īl Maḥallātī, in his treatise *al-La'ālī Marbūṭa fī Wujūb al-Mashrūṭa*, stated the universality of the guardianship (*wilāya*) of the Infallibles and argued for that.

(4) Mullā Muḥammad Kāẓim Khurāsānī, *Ḥāshiyya Kitāb al-Makāsib* (Tehran, 1986), pp. 93-94.

(5) I elaborated on this approach in my book *Naẓariyyih-hā-yi Daulat dar Fiqh-i Shī'ih* [Theories of Government in Shi'ite Jurisprudence] (Tehran: Nashr-i Nay, 2001), pp. 58-79. Muḥammad Bāqir Majlisī, Sayyid Ja'far Kashafī and Shaykh Faḍlullāh Nūrī could be considered those who acknowledge this theory.

(6) See, for example, the permission of Shaykh Ja'far Kashf al-Ghiṭā' to Fatḥ-'Alī Shah of Qajar, *Kashf al-Ghiṭā' 'an Mubhamāt al-Sharī'a al-Gharrā', Kitāb al-Jihād*, Section 1, Chapter 12 (lithograph), p. 394.

(7) For example, Shaykh Faḍlullāh Nūrī' in his treatise "*Ḥurmat-i Mashrūṭih*" [The Sanctuary of Constitutionalism], in *Rasā'il: I'lāmiyyih-hā, Maktūbāt-i Shakykh Faḍlullāh Nūrī*, compiled by Muḥammad Turkamān (Tehran: Rasā, 1983), and *Rasā'il-i Mashrūṭiyyat*, rectified by Ghulām-Ḥusayn Zargarī-Nizhād (Tehran: Kawīr, 1995).

(8) Sayyid 'Abd al-Ḥusayn Lārī, "*Qānūn-i Mashrūṭih-yi Mashrū'ih*" [The Law of Lawful Constitutionalism], Zargarī-Nizhād, ibid., pp. 368-398.

(9) The question from the people of the city of Hamadan and the answers of the authorities of imitation of the city of Najaf to them, Sayyid Muḥammad Ḥasan Najafī Qūchānī, *Ḥayāt al-Islām fī Aḥwāl Āya al-Mulk al-'Allām*, pp. 51-52.

(10) Mīrzā Ḥusayn Nā'īnī, *Tanbīh al- Umma wa Tanzīh al-Milla*, pp. 41-42

(11) Khurāsānī, *Takmila al-Tabṣira*; and *Taqrīrāt al-Qaḍā' wa al-Shahādāt.*

(12) Khurāsānī, the Letter to the Parliament Speaker (1329A.H./1911), in Muḥammad Mahdi Sharīf Kāshānī, *Wāqi'āt-i Ittifāqiyyih dar Rūzgar* (Tehran: Nashr-i Ta'rīkh-i Īrān, 1983), p. 643.

(13) The letter of Khurāsānī and Māzandarānī to the Parliament about Introducing the Prominent Religious Scholars (*ulamā'*) (1328A.H./1910), in Muḥammad Turkamān, *Mudarris dar Panj Dūrih-yi Taqnīnih*, Vol. 1 (Tehran, 1988), pp. 3-5.

(14) Sayyid Muḥammad Kāẓim Tabātabā'ī-Yazdī,, *al-'Urwa al-Wuthqā, Kitāb al-Qaḍā'*, (Tehran, 1999), pp. 5-8.

(15) Shaykh Faḍlullāh Nūrī, "*Ḥurmat-i Mashrūṭih*," in Turkamān, *Rasā'il.*, Vol. 1, pp. 104, 106; also "*Tadhkira al-Ghāfil wa Irshād al-Jāhil*," ibid., Vol. 1, pp. 56-58.

(16) The bill of scientific board of the city of Najaf (1327A.H./1909), in Sharīf Kāshānī, *Wāqi'āt-i Ittifīqiyyih dar Rūzgar*, p. 251.

(17) Fadlullāh Nūrī, "*Ḥurmat-i Mashrūṭih*," and "*Tadhkira al-Ghāfil wa Irshād al-Jāhil,*" ibid.

(18) Nā'īnī, *Tanbīh al-Umma*, pp. 98-102.

(19) See my article, "*Nahwih-yi Ijrā-yi Uṣūl 94 wa 96-yi Qānūn-i Asāsī dar khuṣūṣ-i Intbāq-i Muṣawwabāt-i Majlis bā Mawāzīn-i Shar'*" [The Religion of the Guardian Council (*Shūrā-yi Nigahbān*) Against the Law of the Parliament: How to Implement Articles 94 and 96 of the Constitution], *Āftāb* monthly, Issue 29 (September 2003), pp. 16-25.

(20) Mullā Aḥmad Narāqī, *'Awā'id al-Ayyām*, 'Ā'idih 54 (Qom, 1986), p. 529.

(21) Shaykh Muḥammad Ḥasan Najafī, *Jawāhir al-Kalām*, Vol. 21, p. 397, and Vol. 16, p. 178.

(22) Shaykh Murtadā Anṣārī, *al-Makāsib*, Vol. 2 (Beirut), pp. 47-51. It is worth mentioning that Anṣārī in his previous books, such *as al-Qaḍā or al-Khums*, has followed his master Narāqī.

(23) Khurāsānī, *Ḥāshiyya Kitāb al-Makāsib*, pp. 93-95.

(24) For example, Shaykh Muḥammad Ḥusayn Gharavī Isfahānī, *Ḥāshiyya al-Makāsib*, pp. 213-215, and Āqā Ḍiyā' al-Dīn 'Arāqī, *Sharḥ Tabsirah al-Muta'allimīn, Kitāb al-Matājir*, Vol. 5, p. 40.

(25) The bill by Khurāsānī to Muḥammad 'Alī Shah of Qajar (1327A.H./1909), in Nāẓim al-Islām Kirmānī, *Ta'rīkh-i Bīdārī-yi Īrāniyyān*, Vol. 2, p. 290.

(26) Khurāsānī 's Answer to the people of the city of Hamadan about Constitutionalism, in Najafī Qūchānī, *Ḥayāt al-Islām*, p. 52.

(27) Sayyid Muḥsin Ḥakīm, *Nahj al-Faqāha, Ta'līq 'alā Bay' al-Makāsib*, p. 300; Sayyid Ahmad Khānsārī, *Jāmi' al-Madārik fī Sharḥ al-Mukhtaṣar al-Manāfi'*, Vol. 2, p. 100; Sayyid Abū al-Qāsim Khū'ī, *Miṣbāh al-Faqāha*, compiled by Muḥammad 'Alī Tawḥīdī, Vol. 5, p. 52; Sayyid Abū al-Qāsim Khu'ī, *al-Tanqīh fī Sharḥ al-'Urwa al-Wuthqā, Kitāb al-Ijtihād wa'l-Taqlīd*, compiled by Mīrzā 'Alī Gharavī-Tabrīzī, p. 434. Discussing Holy war (*jihād*), a contemporary jurisprudent in 28th edition of *Minhaj al-Ṣāliḥīn* considers the opinion of the author of the book *Jawāhir* on the general guardianship of the jurisprudent probable, Vol. 1 (Qom, 1990), p. 366.

(28) Khurāsānī, *Ḥāshiyya Kitāb al-Makāsib*, p. 96.

(29) Khurāsānī, "Answer to the people of the city of Hamadan about Constitutionalism," Najafī Qūchānī, ibid., p. 52.

(30) "The government which is a branch of the absolute guardianship of the Prophet is one of the primary rules (*Aḥkām-i Awwaliyyih*) and prior to all secondary rules (*Aḥkām-i Thānawiyyih*) even to prayer and fasting and the pilgrimage to Mecca. The government can unilaterally annul those religious agreements that they made with people in case the agreements are against the interests of the society and Islam. The government can stop any affair either of worship or others in case they are against the interests of Islam." The letter by Sayyid Rūḥullāh al-Mūsavī al-Khumaynī to Sayyid 'Alī Khāminih'ī, in *Sahīfih-yi Nūr*, Vol. 20 (Tehran, 1990), p. 170.

(31) Shaykh Faḍlullāh Nūrī, "*Ḥurmat-i Mashrūṭih*," in Turkamān, ibid., Vol. 1 pp. 104, 111, 113.

(32) Nā'īnī, *Tanbīh al-Umma*, pp. 46, 15, 41, 79, 98.

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