

SHI'ISM

Critical concepts in Islamic studies

Edited by

Paul Luft and Colin Turner

Volume III
Law, rite and ritual

First published 2008
by Routledge

2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN, UK

Simultaneously published in the USA and Canada
by Routledge

270 Madison Avenue, New York, NY 10016

Routledge is an imprint of the Taylor & Francis Group, an Informa business

Editorial material and selection © 2008, J.P. Luft and Colin P. Turner;
individual owners retain copyright in their own material

Typeset in Times New Roman by Keyword Group Ltd.
Printed and bound in Great Britain by
MPG Books Ltd, Bodmin, Cornwall

All rights reserved. No part of this book may be reprinted or reproduced or
utilised in any form or by any electronic, mechanical, or other means, now
known or hereafter invented, including photocopying and recording, or in
any information storage or retrieval system, without permission in writing
from the publishers.

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication Data

A catalog record for this book has been requested

ISBN 13: 978-0-415-39187-0 (Set)

ISBN 13: 978-0-415-39192-4 (Volume III)

Publisher's Note

References within each chapter are as they appear in the original complete
work.

 Routledge
Taylor & Francis Group
LONDON AND NEW YORK

THEORIES OF GOVERNMENT IN SHĪ'Ī FIQH

Muhsin Kadivar

Translated from the Persian by Mujāhid Ḥusayn

Source: *Hikmat* 1(3), 1996: 303–28.

Synopsis: Theories of government, as understood in modern political parlance, have been delineated in Shī'ī thought in the process of derivation of laws (*istinbāt*) by the legists (*fuqahā*) of the last century (14th century *Hijrī*). Altogether six theories of government can be identified in Shī'ī *fiqh*. These theories can be divided on the basis of their source of legality into two groups: those theories whose legitimacy is divinely bestowed, and others whose legitimacy is derived from the people. The theories belonging to the second group are again divided into two categories on the basis of conditionality of the ruler being a legist (*faqīh*). The theories of 'absolute authority of an appointed *faqīh*' and 'limited authority of an appointed *faqīh*' belong to the first group. On the basis of public legitimacy, whose legal foundation is based upon combining God's command with the right of the people, the following four theories have been developed: *Sharī'ah* constitutionalism, supervision of the *marji'* and the rule of the people, rule of an elected *faqīh*, and elected government functioning on the basis of Islamic laws. After providing a descriptive introduction of each of the above mentioned theories, the two most important theories i.e. the absolute authority of an appointed *faqīh* and the rule of an elected *faqīh*, have been compared and contrasted. These two theories have more than twelve common points, while they differ from each other in fourteen instances. The points of difference are: political legitimacy, *fiqhī* legitimacy, the role of public opinion, republicanism, *bay'at* (oath of allegiance), appointment to and removal from office, constitution, acceptability of supervision, extent of powers, term of office, singularity and plurality, the good of the political system, freedoms, and the ability to administer a civil society.

Though Shī'ī political ideas have not yet been compiled in the form of an organised collection, they are clearly visible in the exegeses of some Qur'anic

verses, in the manner of classification of compilations of traditions and the elucidation of some traditions of the Infallibles ('A), in the practical philosophy reflected in political and ethical epistles and in civil administration, in some chapters of *Kalām* (theology) including the discussions on prophethood, especially the issues of *imāmat* and *ghaybah* (occultation), in some historical narratives which describe the behaviour of the 'ulamā' vis-a-vis the rulers and their stand on various political problems of their times, and most important of all, on various instances in the chapters of *fiqh* (Islamic law). The most important chapters of *fiqh* which contain the issues and rules which reflect the political views of the *fuqahā'* are: *Amr bi al-ma'rūf* and *nahy 'ani al-munkar* (commanding the good and forbidding the evil), *qaḍā'* (administration of justice), *ḥudūd* (penal laws), *jihād*, *khumus* (one-fifth changed as religious tax on certain incomes), and *bay'* (sale). Many other chapters of *fiqh*, including chapters on *hajr* (legal incapacity), *nikāh* (marriage), *ṭalāq* (divorce), *ṣawm* (fasting), *hajj*, Friday *ṣalāt* ... also contain relevant views. In Shi'ī *fiqh*, until about a century and a half ago, no separate section on government (*wilāyat*), politics and governance (*imārat*) was envisaged.

The fact that Shi'ī *fuqahā'* have not discussed such an important issue despite their having conducted hairsplitting and penetrating technical analysis of subsidiary and less significant issues is a point to be intensely contemplated. The general minority status of the Shi'ahs, the pressurizing and repressive tactics of the rulers of the time, being removed from political power and its ensuing issues and consequences, and the conspiracies of the imperialists, are mentioned as the causes for this lack of attention. All these points are debatable and questionable. The reality is that political philosophy remained partially stagnant for centuries among the Muslims, and our political thought remained deprived of even feeble growth. The cause of this decline is a topic for another discussion. The *fuqahā'* have expended great effort in deriving the rules and duties of individual behaviour and have left behind a rich storehouse of knowledge, but in the field of public law, especially fundamental laws which are firmly linked with politics, they have not taken any worthwhile step. An example of political views in the *fiqhī* books is found in those rules the responsibility for the execution of which is laid upon the *ḥākim-e-shar'*, ruler or *imām*. They include certain stages of *amr bi al-ma'rūf and nahy 'ani al-munkar*, the administration of justice, carrying out sentences, levying religious taxes (*khumus* and *zakāt*) and spending them, conducting Friday prayers, the sighting of the moon for announcing the beginning and end of the month of *Ramaḍān* and for the performance of *hajj*, guardianship of orphans, and giving in marriage and pronouncing divorce in certain cases. From the early period of *fiqh*, the authority of the legist has been discussed in relation to these issues, and in some of these instances a consensus has emerged among the legists concerning their possessing such authority. But even the acceptance of all

these instances does not necessarily result in the acceptance of the political authority (*wilāyat-e-siyāsī*) of a *faqīh*. During certain periods all these instances were placed in the hands of the *fuqahā'* by way of authority (*wilāyat*) over issues of the *Sharī'ah*, but internal political policy and foreign policy were looked after by the kings by being classified as customary issues (*umūr-e-'urfīyah*); this was the case during the first fifty years of the *Qājār* period.¹ Apart from this, the acceptance of the aforementioned instances does not necessarily imply the acceptance of the highest level, i.e., one which involves exercising authority over life and property and managing political issues. Though it is possible to rely upon the generality present in the views of some legists concerning an 'ādil *faqīh's* vicegerency to the Hidden *Imām* (may God hasten his coming), this reliance serves the purpose only if we accept the possibility of these issues being present in their minds. The presence of certain indications—such as the claims of some of them² that the ruler should be infallible (*ma'sūm*), that it is *ḥarām* to rise in revolt during the period of occultation of the *Imām* (may God hasten his coming)³, etc., and most important of all, their not discussing political issues—renders such a possibility very remote.

Until the middle of the 13th century *hijrī* we know of no separate book written in the field of fundamental laws and *wilāyat-e-faqīh*. Although the numerous treatises written on *kharāj* (land tax)⁴ and Friday prayers⁵ during the *Ṣafawī* period and on *jihād*⁶ during the *Qājār* period were in themselves the consequence of conducive social conditions, they acted as forerunners to an independent analysis of the rules pertaining to *wilāyat-e-faqīh*. Mullā Aḥmad Narāqī (d. 1245/1829) is the first *faqīh* to have provided a separate chapter in his book '*Awā'id al-ayyām* for discussing *wilāyat-e-faqīh*'. His famous protege Shaykh Murtaḍā Anṣārī (d. 1281/1864) provided a critique of his teacher's views in his *Kitāb al-Bay'*⁸ Shaykh Muḥammad Ḥasan Najafī (d. 1266/1849) in his encyclopedic work on Shi'ah *fiqh*, *Jawāhir al-Kalām fī Sharḥ Sharā'i' al-Islam*, while concluding the discussion on *khumus* writes:

Many issues pertaining to this place have not been discussed in the works of our scholars, such as, whether the power exercised by a *ḥākim*, is by way of *ḥisbah* (general supervision) or something else, and if it is by way of *ḥisbah*, why does the authority of the ruler have precedence over the general authority enjoyed by the *mu'minīn* (faithfuls)? [Because this too is on the basis of *ḥisbah*]. And if its basis is not *ḥisbah*, then has God decreed the right to exercise authority for the *ḥākim* and appointed him by having it announced by the infallible *Imām* ('A), or is it by way of representation and deputyship on behalf of the infallible *Imām* ('A) that he occupies office.⁹

From the time of Shaykh Anṣārī the issue of *wilāyat-e-faqīh* has been raised by all *fuqahā'* in the *kitāb al-bay'* (book of sale). But till the time of

Mashrūṭah (the Constitutional Movement of 1906 in Iran) no real change in the political ideas of the *fuqahā'* is visible. The coming into contact of the *fuqahā'* with political concepts of the kind of rights of the people, freedom, justice, supervision, despotism, separation of powers, equality, representation, vote, law and constitution, results in our witnessing two varying *fiqhī* (legal) stances: the traditional (*sumatī*) stance involving a total rejection and defence of the earlier course, and the other desiring change by combining the two concepts, i.e., *mashrū'ah* (having the *sharī'ah*) and *mashrūṭah* (constitutional government). The political views of the two great *fuqahā'* of the period of *Mashrūṭah*, 'Allāmah Mīrzā Muḥammad Ḥusayn Na'inī (d. 1355/1936) in *Tanbīh al-ummah wa tanzīh al-millah*¹⁰ and Shaykh Fadlullāh Nūrī (d. 1327/1918) in the treatise *Tadhkirah al-ghāfil wa irshād al-jāhil*¹¹ are considered important milestones in the progressive journey of Shī'ī thought on the issue of government. Among the Shī'ī *fuqahā'* and theorists, Imām Khumaynī (*rahimahullāh*) (d. 1368 H.S./1989) is the first thinker who succeeded in establishing the first Islamic government based upon Shī'ī *fiqh* for putting into practice the theory of *wilāyat-e-faqīh*.

The political views of Imām Khumaynī (*rahimahullāh*) concerning the need to rise against the primitive system of monarchy and the necessity of establishing an Islamic government were secretly disseminated after his lectures on *fiqh* in Najaf in the year 1348 H.S. (1969) were compiled.¹² His written *fiqhī* views were published on the pattern of Narāqī in 1396 H.Q. (1976) as a part of his evidential *fiqhī* discussion of *bay'* (sale).¹³ His other political views, apart from those expressed in the books *Kashf al-asrār*, *al-Rasā'il* and *Tahrīr al-wasīlah*, are reflected in the voluminous collection of his speeches *Ṣaḥīfah-e-nūr*.¹⁴ The theory of absolute authority of the *faqīh* (*wilāyat-e-muṭlaqah-e-faqīh*) is based on the views of Imām Khumaynī (*rahimahullāh*). The entrance of this *fiqhī* discussion in the midst of society and its becoming a part of the political parlance and the nation's constitution would have doubtlessly not been possible without his assistance. A few months before the victory of the Islamic Revolution of Iran under the guidance of *Imām*, the desire of the people for an Islamic government developed into that of an Islamic republic. Regardless of its not being envisaged in the draft, *wilāyat-e-faqīh* was incorporated in the constitution ratified¹⁵ in 1358 H.S. (1979), and considering that the wide powers of the *waliyy-e-faqīh* (the *faqīh* wielding power) on the basis of the theory of *wilāyat-e-faqīh* had not found expression in it, the task of amending it was entrusted to the Constitutional Review Council (*Shawrāy-e-Bāznigārī-e-Qānūn-e-Asāsī*).¹⁶ After the death of that life giving *faqīh*, the theory of absolute authority of the *faqīh* was given formal recognition in the amended constitution.¹⁷

After the establishment of the Islamic Republic a large number of books have been written about Islamic government and *wilāyat-e-faqīh*. The most important and worth mentioning among them are the short articles of

*al-Islam yaqūdu al-ḥayāt*¹⁸ and the book *Dirāsāt fi wilāyah al-faqīh wa fiqh al-daulah al-Islamiyyah*.¹⁹ The stages of development of the issue of government in Shī'ī *fiqh* is the subject of another article of the writer of these lines.

The word *daulat* (government) is used in this article in its political sense, although the word *ḥukūmat* is generally used in contemporary Shī'ī *fiqh* to convey this meaning. By government is meant that power structure which has stable authority in a definite land over a definite people, and is considered internally, the maintainer of law and order, and externally, the safeguarder of the integrity and interests of the nation as well as each one of its citizens. This power structure becomes functional through administrative, political, judicial and military departments and organizations.²⁰

By 'a theory' is implied a set of organised concepts which are related to each other and whose aim is to define, explain and elucidate a particular fact. The benefit of a socio-political theory lies in its explaining and explicating the social realm. Although the real efficacy of a theory ordinarily lies in its analytical and explanatory role, it at times is used for evaluation and judging; this latter use is especially prevalent in political studies. In this regard political theories contain advice, evaluation of method and recommendations.²¹ In contemporary political philosophy a number of theories about government have been propounded,²² the analysis of which would require a separate treatise.

An important question which is raised here is: Do we have in Islamic political thought, or at least in Shī'ī political thought or Shī'ī *fiqh*, a single theory about government, or are there numerous theories in this area? In other words, does Shī'ī *fiqh* offer a single theory of government or have numerous theories been propounded or are capable of being propounded on the basis of recognised *fiqhī* criteria of this school? A study of Shī'ī *fuqahā'*'s views clearly shows that this century has been a period of maturity and excellence of Shī'ī political thought. Numerous theories of government in Shī'ī *fiqh* were put forward, discussed and critically analysed in the *ḥawzah-e-'ilmiyyahs* (Shī'ī seminaries). We have presented in this article only those theories which have been developed by some acknowledged *faqīh* and are based upon recognised and prevailing *fiqhī* criteria and to which attention has been paid in the *ḥawzah-e-'ilmiyyahs* in the form of analysis and criticism. The presence of numerous theories indicates that no theory of government is considered a necessary part of Shī'ī *fiqh* in the sense that its rejection entails punishment; further there is no consensus of opinion of all the *fuqahā'*. The comparison of these theories with one another will bring to light their academic value. The study, analysis, evaluation and criticism of theories of government is the most important step in the growth of political thought. Comparing the theories of government in Shī'ī *fiqh* with the theories of government of the *Ahl-e-sunnat*, the Christians as well as those propounded in political philosophy in the West, is a very necessary exercise. We have limited the scope of this article to the descriptive presentation of

these theories, and from the fear of prolonging the discussion, have abstained from mentioning *fiqhī* proofs and legal justifications, from analysing political views, and most important of all, their evaluation and criticism. We hope to cover them in a separate article.

For emphasising the importance of this subject and the need to concentrate on it, we recount that the late *Imām* Khumayni mentioned the two issues of the limits of individual and social freedom, and outlining and determining the authority of *wilāyat-e-faqīh* within the governmental apparatus and in society, as belonging to the class of issues encountered by the people as well as the government.

He states:

In an Islamic government the door of *ijtihād* should be always open, and the nature of the Revolution and the Islamic government constantly necessitates that *ijtihādī fiqhī* views in various fields—even if they oppose each other—be freely expressed, and no one has the power or the right to stop this. But what is important is a correct understanding of the government and society so that the Islamic government could plan on its basis the betterment of the Muslims.²³

Theories of government can be classified in many ways. The most important criteria of classification are:

- 1) Origin and essence of the government
- 2) Its objective
- 3) The limits of individual freedom and governmental authority
- 4) Source of legitimacy of political power.

The classification of legal theories of government on the basis of source of legitimacy of political power is clearer than other classifications. As to whether we consider the source of governmental power to be God or natural law or the will of the people has an impact upon the extent of governmental authority and the limits of individual freedom.²⁴ However the theories of government in this article have been classified on the basis of legitimacy of political power.

By legitimacy is not meant legal legitimacy (*mashrū'īyat-e-fiqhī*); rather it is political legitimacy which is implied. The issue of legitimacy implies a rational explanation of the power exercised by a ruler. What justification does the ruler have for exercising his power, and what rational explanation do the people possess for obeying him?

Legitimacy requires of the strength of the political system to create and sustain the belief that the existing political organs are the most suitable ones for the society. Legitimacy is closely linked with the idea of pledge and commitment to obey.²⁵

On the basis of source of legitimacy, the theories of government in Shī'ī *fiqh* can be divided into two groups:

The first group represents theories based upon divine legitimacy.

The second group comprises of theories based upon public legitimacy coupled with observance of divine rules.

The theories of both the groups are similar from the angle of their ultimate reliance upon God for legitimacy and in their acceptance that He possesses absolute authority over the world and human beings. Apart from this they believe that as long as the infallible *Imām* is present in the society, the authority belongs to him. But during the period of occultation of the infallible *Imām* ('A), the *fuqahā'* belonging to the first group are of the view that the divine authority (*wilāyat-e-ilāhī*) has been directly entrusted to the *fuqahā'*. They are, with God's permission, appointed by the infallible *Imām* ('A). Therefore the ruler of the people is the vicegerent of God on earth and the representative of the Prophet (S) and the *Imām* ('A). We have called this legitimacy divine because there is no element of public involvement in it. Contrary to this, the *fuqahā'* belonging to the second group believe that God has made man the ruler of his own destiny, and during the occultation of *Imām* Mahdī (may God hasten his advent), political authority has been granted to him so that he may exercise it within the divine framework and on the basis of the *shari'ah*. Consequently, on the basis of this principle, it is the prerogative of the people, and this God-given right cannot be taken away from them. Despite the fact that the theories of the second group ultimately depend upon God, and the *ummah* too can solely act within the framework of the *shari'ah* for exercising its God-given political authority, we have named this kind of legitimacy as public legitimacy coupled with the observance of divine rules due to the total involvement in it of the public element.

It is obvious that the authority of the people is below the authority of God and of a lower degree, and never at the same horizontal level. Hence people are neither independent of divine permission and delegation nor are they an independent source of legitimacy, and sans the God-given right, they do not possess any kind of legitimacy.

Article 56 of the Constitution of the Islamic Republic of Iran states: 'Absolute sovereignty over the world 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 articles.'

The theories of the second group can be further divided into two subgroups.

First sub-group: Theories which believe that the *ummah* is bound to hand over political authority to the *fuqahā'*. A just *faqīh* is the representative of

the people and he rules on the basis of Islam. The concept of political authority of a *faqīh* through election (*wilāyat-e-intikhābī-e-faqīh*) is considered among the theories of this group.

Second sub-group: It is the theory which considers that the Islamic ummah is free to choose a ruler as well as to exercise political authority, and restricts *fuqahā'* (expertise in Islamic Law) to the domain of verifying the conformity of laws with the *sharī'ah*, and does not consider it as a necessary quality for a ruler or an essential requisite of public administration. Elected government based upon Islamic laws is thus a theory of the second group.

The discussion about these two types of legitimacy is the subject of another article.

From an analysis of the discussions of most *fuqahā'*, a clear-cut theory about government during the period of *ghaybah* of *Imām Mahdī* (may God hasten his advent) is not obtained. This is either because they have envisaged the duties of *fuqahā'* as limited to administrating very trivial affairs, or because they have restricted *umūr-e-hisbiyyah* (affairs in which general supervision is to be exercised by the *mu'minūn*) to a very narrow area. Further they have remained silent about what should be done concerning political affairs, internal law and order and foreign relations during the period of *ghaybat*; to whom should they be handed over; and what are the principles on whose basis these activities are to be performed.²⁶ At times they believed that this is also one of the consequences of being deprived of the divine presence of the *Imām* ('A) for which we ourselves are responsible, and there is no solution to the wrong done with ones own hands.

They contented themselves by adopting a negative posture on the issue of government, and as a result, rules relating to gifts given by the king, accepting political office from a tyrant, helping the unjust, utilising land which requires paying tribute, etc. are considered examples of negative rules of government in *Shi'ah fiqh*. But our discussion is about the positive and affirmative views concerning government. Our claim is that the necessity of having a positive attitude towards the issue of government and developing a theory about it has been appreciated only by a handful of *Shi'ah fuqahā'*. In this article we intend to acquaint ourselves with the views of this group of *fuqahā'*. From among this small number the majority falls in the first group (those accepting divine legitimacy), and among the small minority adopting the theories of the second group (those accepting public legitimacy coupled with the observance of divine laws), the majority belongs to the first sub-group. We have come across six positive theories about government in *Shi'ah fiqh*, and may be a more exhaustive and thorough study could increase the number. These six theories are:

- 1) Absolute authority of an appointed *faqīh*.
- 2) Limited authority of an appointed *faqīh*.

- 3) Constitutional government working in accordance with the *sharī'ah*.
- 4) Supervision of the *marji'* and government of the people.
- 5) Authority of the *faqīh* through elections.
- 6) Elected government on the basis of Islamic laws.

Some of the theories mentioned above are very close to one another and appreciating their difference requires contemplation and acuteness of perception. These theories have been divided on the basis of legitimacy into two groups, divine legitimacy and public legitimacy coupled with the observance of divine laws. The first two theories (from among the six theories) come under divine legitimacy, while the last four fall under the category of public legitimacy coupled with observance of divine laws. From among the proponents of the various kinds of *wilāyat-e-faqīh*, the majority of *fuqahā'* is inclined towards the theory of limited authority of the *faqīh* through appointment. Acquaintance with the advocates of each theory and their sources and proofs along with a critical analysis of the claims is the subject of the forthcoming articles.

This article has been divided into three sections: The first section covers the introduction of theories based upon divine legitimacy. The second section expounds the theories based upon public legitimacy coupled with the observance of divine laws. The third section identifies the common as well as diverging points of the two groups of theories, i.e., between the theories of *wilāyat* by appointment and *wilāyat* by election of a *faqīh*. Keeping in mind that the issues of political philosophy have not been discussed extensively in Iran, especially by the religiously oriented researchers, the shortcomings which generally accompany treading new ground will be unavoidable. The sensitiveness and intricacies involved in this kind of discussion also add to the problem of expression.

The suggestions and criticisms of scholars will hopefully compensate the shortcomings of this writer. By the way, I have tried to narrate the views of each one of the advocates of the various theories in an unbiased manner and have tried to abstain as far as possible from inclining towards a particular theory. The criticism and evaluation of the claims of each theory have been left for another article.

Section I

Theories of government based upon divine legitimacy

On the basis of this set of theories, a legitimate government is a government which comes into power through being appointed by God, is affiliated with Him, and occupies office with His permission. The opinion and desire of the people does not have any share in the divine legitimacy. People are obliged to accept the legitimate government and to obey it. The government

appointed by God is legitimate irrespective of whether the people are inclined or disinclined towards it. On this criterion are based the two theories of absolute authority of the *faqīh* through appointment and limited authority of the *faqīh* through appointment. This latter division is on the basis of the limits of governmental power.

The First Theory: Absolute authority (*wilāyat-e-muṭlaqah*) of the *faqīh* through appointment.

This theory is based upon the following presumptions:²⁸

- 1) The presence of a government is necessary in society.
- 2) No one possesses by himself the right to exercise authority over others. *Wilāyat* (exercising authority) requires a source of legitimacy.
- 3) *Wilāyat* is originally the prerogative of God and no one has a right to *wilāyat* without his permission. The legitimacy of the government is solely acquired on the basis of *sharī* permission given by God, and every government without *sharī* permission is illegitimate and *tāghūt* (despotic).
- 4) God initially gave the *wilāyat* to the prophets ('A), especially to the Noble Prophet (S).
- 5) *Imām* 'Alī ibn Abī Tālib ('A) was appointed by God to the post of *wilāyat* and *khilāfat* of the Prophet (S) and this was announced by the Prophet (S) himself. After 'Alī ('A) the infallible *Imāms* ('A) came to possess *wilāyat* one after another. Presently *Imām* Mahdī (may God hasten his advent) possesses the grand *wilāyah*.
- 6) On the basis of a rational ('*aqlī*) proof and a proof developed by combining rational and textual (*naqlī*) propositions, as well as numerous other textual proofs, the *wilāyat* over the human society during the period of *ghaybah* of *Imām* Mahdī (may God hasten his advent), has been entrusted to the just ('*ādil*) *fuqahā'*. However *wilāyat-e-faqīh* is among those issues whose conception is sufficient for their confirmation, and it is therefore in no great need of a proof.
- 7) The just *fuqahā'* are duty bound to take steps to establish an Islamic government while the people are obliged to help and follow them.
- 8) If any just *faqīh* succeeds in establishing an Islamic government and exercising authority, it becomes obligatory upon everyone including the other *fuqahā'* to follow him.
- 9) He is the representative (*nā'ib*) of *Imām* Mahdī (may God hasten his advent) and possesses all the powers of the Prophet (S) and the *Imāms* ('A) relating to the affairs of government i.e. he possesses absolute authority (*wilāyat-e-muṭlaqah*). *Wilāyat-e-faqīh* is therefore permanent, absolute, indivisible and centralised.²⁹
- 10) He is the source of legitimacy of the government. All the governmental bodies, the constitution and the general laws become legalised through his executive order.³⁰

- 11) The task of the *Khūbragan* (the constitutional body of mujtahids who determine the *waliyy-e-faqīh*) is only to discover the divine appointment (*naṣb-e-ilāhī*), and in the event of his incapacity, to discover the divine dismissal ('*azl-e-ilāhī*); otherwise the *khūbragān* themselves are under the authority of the *waliyy-e-faqīh*.³¹
- 12) *Wilāyat-e-faqīh* is very pervasive from the geographical and human angle.³²
- 13) In instances where the *waliyy-e-faqīh* considers it beneficial for the state, the criterion is adult suffrage.³³
- 14) *Wilāyat-e-faqīh* is not limited to the primary and secondary *fiqhī* rules. His *ḥukm* (order) has priority over all the subsidiary divine rules.³⁴
- 15) *Waliyy-e-faqīh* is answerable only to God.
- 16) In view of the *fiqāhat* (legal expertise) and '*adālat* (justness) required to be present in a *waliyy-e-faqīh*, dictatorship and totalitarianism are out of question in a state functioning on the principles of absolute authority of the *faqīh*, because with the stipulation of '*adālat* as a condition, as soon as a *faqīh* intends to exercise dictatorial and totalitarian authority he automatically and immediately falls from office.³⁵

In view of the element of *fiqāhat* and the process of consultation with specialists the possibility of error is reduced to a minimum. From the point of view that the *waliyy-e-faqīh* is immediately after the infallible *Imām* ('A) and performs the important duty of guiding the *ummah* under the special auspices of *Imām* Mahdī ('A), the welfare of the state based upon the absolute authority of a *faqīh* is guaranteed to a very large extent.³⁶

Although the theory of absolute authority of a *faqīh* is derived from the views expressed by Mullā Aḥmad Narāqī and Shaykh Muḥammad Ḥasan Najafī, the author of *al-Jawāhir*, codifying it, giving it *fiqhī* consistency, and deriving its *kalāmī* (theological) roots, especially the explicit elucidation of the precedence of a *ḥākim's ḥukm* over all primary and secondary *shar'ī* rules, are considered the ideological achievements of *Imām* Khumayni (*rahimahullāh*). Presently, the theory of absolute authority of a *faqīh* is the constitutionally accepted theory in the Islamic Republic of Iran.

The Second Theory: Limited authority (*wilāyat-e-muqayyadah*) of a *faqīh* through appointment.

The theory of limited authority of a *faqīh* through appointment is based on the following presumptions:

- 1) A civilized human society is in need of a government.
- 2) Islam, as the most complete religion, has provided for the material as well as spiritual needs of man a set of guidelines which ensure his good and advancement. From among these cardinal issues is the issue of government because on it depends the execution of most Islamic laws.

- 3) No one has a right to rule over others except when this right is bestowed on the part of God. Therefore every government which has not acquired its legitimacy from God is illegitimate and usurpative.
- 4) The Prophet (S) has been bestowed absolute authority by God, and after him(S), 'Alī ('A), and later the infallible *Imāms* ('A) were appointed to the post of *wilāyat*, *imāmat* and government.
- 5) The need of the people for a government and an authority during the presence of the *Imāms* ('A), and later during the period of occultation, is the same, and for safeguarding the interests of the Shi'ah on the basis of the principle of *lutf* (benevolence), it is obligatory for *Imām* ('A) to appoint a *waliyy* and *hākim*. The just *fuqahā'* possess in general (as a class) power delegated to them by *Imām* Mahdī (may God hasten his advent). Hence they have authority over the affairs of the Shi'ahs and are guardians over their social, political and legal activities pertaining to this world and the Hereafter.
- 6) It is obligatory for a Shi'ah, even if he is living in a non-Islamic country or an Islamic country which is governed by an unIslamic government to obey the *sharī* government.
- 7) It is obligatory for the *fuqahā'* to involve themselves in the affairs of Muslims on the principle of protecting their interests. All those affairs which it was the *sharī* responsibility of the *Imām* ('A) to administer, and which are connected with the interests of the Islamic *ummah* and involve exercising authority over the people, and which governments generally act to safeguard, will be under the responsibility and management of the *fuqahā'*.
- 8) It is clearly established that the *faqīh* does not possess total and absolute authority in the sense that he may exercise authority over people's property and in that his total obedience be obligatory in whatever he commands or forbids. The powers of the *waliyy-e-faqīh* lie within the parameters of the subsidiary rules (*ahkām-e-far'iyah*) of the *sharī* and no clause or rule which exceeds this jurisdiction is acceptable.
- 9) For safeguarding the religious system and the interests of the Muslims the prerogative powers of the *waliyy-e-faqīh* are limited to two areas: firstly, to executing *sharī* rules, and secondly, to the area of giving precedence to some rules in preference to others in the event of contradiction arising between them. Thus, by the use of prerogative powers the application of *sharī* rules will never be suspended. The Islamic norms such as *muzāra'ah* (share cropping), *ijārah* (rent) and *tijārah* (trade) are neither alterable nor suspendable.

From among those who have inclined towards this theory can be named the late Ayatullāh Gulpāygāni. A shade of this theory is visible in the

letter written by *Āyatullāh* Lutfullāh Šāfi while he was the secretary of *Shawāy-e-Nighabān* (Guardianship Council) to *Imām* Khumayni.³⁷

Notes

- 1 See Ja'fariyān, Rasūl, *Dīn wa siyāsāt dar dawrah-e-Šafawī*, Qum: *Anšāriān*, 1370 H.S.
Hā'irī, Dr. 'Abd al-Hādī, *Nakhustīn ruyāruiyhāy-e-andishegarān-e-Iran bā do rūyah-e-tamaddun-e-gharb*, Tehran: Amīr Kabīr, 1367 H.S.
- 2 See 'Allāmah Hīllī, al-Hasan ibn Yusuf, *Tadhkirah al-fuqahā'*, Tehran: lithographic print, 1: 452-453.
- 3 See, Al-Ḥurr al-'Amīlī, Muḥammad ibn al-Hasan, *Wasā'il al-Shi'ah ilā tahsil masā'il al-sharī'ah*, Qum: *Mu'assasah Al al-Bayt li Ihyā' al-Turāth*, 1412 H.Q. 23rd chapter of the *Kitāb al-jihād* dealing with the rule applicable to rising in arms before the advent of al-Mahdī ('A), 15: 50-56.
- 4 Al-Muḥaqqiq al-Thānī, al-Muḥaqqiq al-Ardabīlī, al-Fāḍil al-Qatīfī and al-Fāḍil al-Shaybānī, *al-Kharājīyah*, Qum: *Mu'assasah al-Nashr al-Islamī*, 1413 H.Q.
- 5 Al-Muḥaqqiq al-Thānī, al-Shaykh 'Alī ibn al-Husayn al-Karakī, *Rasā'il al-Muḥaqqiq al-Karakī*, first collection, edited by al-Shaykh Muḥammad al-Ḥussun, Qum: *Āyatullah al-Mar'ashī Library*, 1409 H.Q., treatise on *Ṣalāt al-Jumu'ah*, 134-172.
Al-Fayd al-Kāshānī, Muḥammad Muḥsin, *Al-Shihāb al-thāqīb fī wujūb ṣalāt al-Jumu'ah al-'aynī*, Qum: n. d.
See Ja'fariyān, *Dīn wa siyāsāt dar dawrah-e-Šafawī*, bibliography of treatises on Friday prayers, 152-182.
- 6 Kāshīf al-Ghīṭā', al-Shaykh Ja'far al-Najāfī, *Kashf al-ghīṭā' min Khafīyyāt mubhamāt al-sharī'ah al-gharrā'*, Tehran: 1317 H.Q. *Kitāb al-jihād*.
Al-Qummi, al-Mirzā 'Abū al-Qāsim ibn al-Hasan, vol. 1 of *Jāmi' al-shatāt*, Tehran: 1396, H.Q.
See Hā'irī, *Nakhustīn ruyāruiyhāy-e-andishegarān ...*, Chapter 9, "Nighahī gudharā be adāb-e-jihādī," 374-383.
- 7 Al-Narāqī, al-Maulā Aḥmad, 'Awā'id al-ayyām, Qum: *Bašīratī*, 1408 H.Q. lithographic print, 185-206.
[*Huṣūl-e-wilāyat-e-hākim-e-Islamī*, translation of the discussion on *wilāyat-e-faqīh* from the book 'Awā'id al-ayyām of Maulā Aḥmad Narāqī, Tehran: *Ministry of Islamic Guidance*, 1365 H.S.]
- 8 Al-Anšāri, al-Shaykh Murtaḍā, *al-Makāsib [al-matājir al-bay']*, Tabriz: 1375 H.Q. lithographic print, 153-155: issue concerning the *hākim* being one of the guardians who has authority over the property of one who is not legally qualified to exercise authority over his own property.
- 9 Al-Najāfī, Muḥammad Ḥasan, *Jawāhir al-kalām fī sharh Sharā'i' al-Islam*, Beirut: *Dār Ihyā' al-Turāth al-'Arabī*, 1981, 16:180.
- 10 Nā'inī, Ayatullāh Shaykh Muḥammad Ḥusain, *Tanbīh al-ummah wa tanzīh al-millāt dar asās wa uṣūl-e-mashrūṭiyyat or Ḥukūmat az nazar-e-Islam*, preface, footnotes and annotations by Ayatullāh Sayyid Maḥmūd Ṭāliqānī, Tehran: 1334 H.S.
- 11 Torkamān, Muḥammad (compiler), *Rasā'il, i'lāmiyyehā, maktūbāt, ... wa ruznāme-e-shaykh Shahīd Faḍlullāh Nūrī*, Tehran: *Rasā'*, 1362 H.S. vol. 1: 55-100 and also the question put to Shaykh Faḍlullāh Nūrī about his initial support and later opposition to constitutional movement and its *sharī* proofs, vol 1: 100-144.

- 12 Imām Khumayni, *Wilāyat-e-faqīh*, Tehran: *Mu'assasah-e-Tanzūm wa Nashr-e-Āthār-e-Imām Khumayni*, 1373 H.S.
- 13 Ibid., *Kitāb al-bay'*, Qum: n. d., vol 2: 459–520 [The functions and powers of *waliyy-e-faqīh*, translation of discussion on *wilāyat-e-faqīh* from *kitāb al-bay'* of Āyatullāh al-'Uzmā Imām Khumayni, Tehran: *Ministry of Islamic Guidance*, 1365].
- 14 Imām Khumayni, *Kashf al-asrār*, Qum: n. d.
Imām Khumayni, *al-Rasā'il*, Qum: 1385 H.Q., treatise on *ijtihād wa taqlīd*.
Imām Khumayni, *Tahrīr al-wasilah*, Qum: *Ismā'iliyān*, n. d.
Ṣahīfah-e-nūr, a collection of Imām Khumayni's counsels, prepared and compiled by *Intishārāt-e-Sāzmān-e-Madārik-e-Farhangī-e-Inqilāb-e-Islamī*, 22 volumes, Tehran.
- 15 Constitution of the Islamic Republic of Iran, 1358, Secretariate of the Committee for the Final Review of the Constitution, articles 5, 57 and section 8, articles 107–112.
- 16 "What has been incorporated in this constitution is in my opinion deficient to a certain extent, and the fact is that the clergy (*rauhāniyyat*) enjoys more powers than this in Islam, although the gentlemen have, with the intention of not opposing the modernists further, given some ground. What the constitution contains are only some of the functions of *wilāyat-e-faqīh* and not all its functions". Imām Khumayni, *Ṣahīfah-e-nūr*, 11:133.
Order issued for constituting a Constitutional Review Council: *Ṣahīfah-e-nūr*, 21:122–123, 4.2.1368 H.S.
- 17 The constitution of the Islamic Republic of Iran as amended in 1368 H.S. Constitutional Review Council, article 57.
"The explicit mention in the constitution of the term '*wilāyat-e-mutlaqah-e-faqīh*', which was achieved by the efforts of the representatives of *Jāmi'ah al-Mudarrisin* in the Review Council, the imams of Friday prayers, the martyr cherishing people, and essentially by the beneficence and affection of the honourable Leader of the Revolution, gave life to and immortalized the principal legacy of Imām Khumayni." Āyatullāh Ādhari Qummi, *Pursish wa pāsukh-e-madhhabi, siyāsī wa ijtimā'ī*, Qum, *Dār al-'ilm*, 1372 H.S. 155.
Detailed report of proceedings of the Review Council of the Constitution of the Islamic Republic of Iran, vol. 3, Tehran: 1369 H.S. 40th session, 1638–1639.
- 18 Al-Sadr, Āyatullāh Shahīd Sayyid Muḥammad Bāqir, *Majmū'ah al-Islam yaqūdu al-hayāt*, Beirut: *Dār al-Ta'arūf*, 1399 H.Q.
- 19 Al-Muntazirī al-Najafābādī, Āyatullāh al-Shaykh Ḥusayn 'Alī, *Dirāsātun fi wilāyah al-faqīh wa fiqh al-daulah al-Islamiyyah*, 4 vols. Qum: *al-Markaz al-'Ālamī li al-Dirāsāt al-Islamiyyah* and *Dār al-Fikr*, 1408–1411 H.Q. Up till now nearly 40% of this 4 volume set has been translated into Persian: *Mabānī-e-fiqhī-e-hukūmat-e-Islamī*, vol. 1–3, translated and annotated by Maḥmūd Salawāti, Tehran and Qum: *Kayhān-e Andیشه*, 1367–70; vol 4, translated and annotated by Abū al-Faḍl Shakūrī, Qum: 1371.
- 20 Daryush Āshūrī, *Danishnameh-e-Siyāsī*, (Tehran, *Murwārid wa Suhrawardī*, 1366 H.S.), 162–163.
- 21 Andrew Vincent, *Theories of government*, trans. Dr. Ḥusayn Bashīriyyah, (Tehran: *Nashr-e-Ney*, 1371), 70–71.
- 22 The different theories of Islamic government have been discussed earlier in the following books and articles:
- 1) 'Amīd Zanjānī, 'Abbās 'Alī, *Nizām-e-Siyāsī wa rahbarī dar Islam*, vol. 2 of *Fiqh—Siyāsī*, 2 vols (Tehran: *Amīr Kabīr*, 1366), 65–110. The honourable writer has discussed the constitutional system of Āyatullāh Nā'ini, the

- wilāyat-e-faqīh* of Imām Khumayni, and the elected imāmat of Āyatullāh Muntazerī.
- 2) Nādī Najafābādī, Ghulām Ḥusayn, Barraṣī-e-ta(bīqī-e-seh nazariyyah-e-hukūmat-e-Islamī, *Kiyān*, no. 6 (Khurdād 1371): 2–6.
This article undertakes a peripheral comparison of the three theories and does not delve into their contents for comparison. Its contents are focused on the preface of the first volume of *Mabānī-e-fiqhī-e-hukūmat-e-Islamī* mentioned earlier.
- 3) "Seh ta'bīr az wilāyat-e-faqīh," *Salām*, 12.4.70 H.S. The three interpretations intended in the article are: Providing general guidance, a government combining widespread forces, and a responsible guided government of the people.
- 23 Imām Khumayni, *Ṣahīfah-e-nūr*, 21:47, 10-8-1368 H.S.
- 24 Bashīriyyah, Dr. Ḥusayn, "Preface of the Translator," in Vincent *Theories of Government*, 7–8.
- 25 Vincent, *Theories of Government*, 67–68.
- 26 Refer for example the views of Āyatullāh Sayyid Abū al-Qāsim Mūsawī Khu'ī in *Misbah al-fiqāhah*, 5: 34–53, penned by Muḥammad 'Alī Tauhīdī, and *al-Tanqīh fi al-ijtihād wa al-taqlīd*, 1: 419–432, penned by Mirzā 'Alī Gharawī Tabrizi.
- 27 Mīr Fattāh Ḥusaynī Marāghī presents three theories (possibilities) in the discussion on *wilāyat-e-faqīh*:
- 1) Vicegerency and representation on behalf of Imām Mahdī ('A).
 - 2) Granting of authority (*wilāyat*) to a *faqīh* by Imām Mahdī ('A).
 - 3) *Wilāyat-e-faqīh* belongs to the category of rule (*hukm*) of the *sharī'ah* i.e. in those instances where the *faqīh* has authority, this rule has been stipulated by the *sharī'ah* and not by Imām Mahdī ('A). He himself inclines towards the third theory. Considering that the theory adopted by him does not greatly differ with the theory of *wilāyat-e-intiṣābī-e-muqayyadah-e-faqīh* as regards its political ramifications we have abstained from mentioning it as a separate theory in the chapter on government.
- 28 These presumptions have been derived from *Kitāb al-bay'* and *Wilāyat-e-faqīh* of Imām Khumayni. By the way, the ascertainment and elucidation of Imām Khumayni's views has been done by us using the remarks of his *faqīh* students who include the *fuqahā'* of the Guardianship Council, members of the Committee for Determining the Good of the System (*Majma'-e-Tashkhiṣ-e-Maslahat*), *fuqahā'* of the Constitutional Review Council, the Assembly of Experts (*Majlis-e-Khubragān*), and the members of *Jāmi'ah-e-Mudarrisin* of the *Hawzah-e-'Ilmiyyah* of Qum. For a comprehensive discussion on this theory the following books are recommended:
Āyatullāh Jawādī Āmulī, "*Wilāyat wa Imāmat*," *Pirāmūn Wahy wa Rahbarī*, (Tehran: Al-Zahrā, 1368 H.S.), 112–210.
Hukūmat-e-Islamī wa wilāyat-e-faqīh, Āyatullāh Muḥammad Taqī Miṣbāh Yazdī, Tehran: *Islamic Propagation Organisation*, 1369 H.S.
Lārījānī, Muḥammad Jawād, "Hukūmat wa Marz-e-Mashrū'iyat", *Naqd-e-Dindārī wa Modernism*, (Tehran: *Ittilā'āt*, 1372 H.S.).
- 29 Imām Khumayni, *Kitāb al-bay'*, 2: 467, 483.
Ibid, *Tahrīr al-Wasilah*, 1: 482, *Ṣahīfah-e-Nūr*, 20: 163, 165, 170, 171.
The stipulation of perpetuity is derived from the discussion of the Constitutional Review Council and the letter of *Jāmi'ah-e-Mudarrisin* of *Hawzah-e-'Ilmiyyah* of Qum to this Council. Refer to the detailed proceedings of the Review

Council of the Constitution of the Islamic Republic of Iran, 3:209-1261 and 1284. The conditions of indivisibility and centralisation have been derived from the explanations provided by a member of the Constitutionaal Review Council.

The replies of 'Anūd Zanjanī and Dr. Lārījānī given to questions raised by the university students concerning the Constitution and *Wilāyat-e-muṭlaqah-e-faqīh*, the daily *Risālat*, 20.3.1371 H.S., 11.

- 30 Lārījānī, "Hukūmat wa Marz-e-Mashrū'iyat," 77-78.
- 31 Derived from the discussions of the Constitutional Review Council, p. 1249; and the remarks of Muhammad Ridā Fākīr "Mulaḥiẓāt Pīrāmūn-e-Wazā'if-e-Khubragan," the daily *Risālat*, 19.7.1369 H.S. and Ayatullāh Adharī Qummi, *Pursish wa pāsukh-e-madhhabī, siyāsī, . . .*, 203.
- 32 Ayatullāh Adharī Qummi, *Pursish wa Pāsukh*, 205.
- 33 The statement, 'the criterion is adult suffrage' is a pronouncement of Imām Khumaynī. On the basis of *wilāyat-e-muṭlaqah-e-faqīh*, we are compelled to add the condition, in instances where the *waliyy-e-faqīh* considers it beneficial for the state.
- 34 *Ṣahīfah-e-Nūr*, 20:170-171.
- 35 *Ibid*, 9:183.
- 36 "The concept of despotism, self opinionatedness or egoism, and taking decisions to the detriment of the people, is in no way present in the meaning of *wilāyat-e-faqīh* which itself is the product of human values. 'Adālat, in that specific sense, is among the conditions of *wilāyat*. *Wilāyat* which is coupled with 'adālat is immune from harm, because with the taking place of a single act which is against and outside the domain of Islamic commands and prohibitions, and by the perpetration of the smallest injustice, by wrong behaviour, by an act contradicting the *sharī'ah*, by favouritism and neglect of duty, the quality of 'adālat is divested from him and he is dismissed from his post. This procedure, which ensures the good of mankind and the interests of the society and safeguards values, is neither seen in any other system of government nor in any method of public control and supervision" Speech of the Leader of the Revolution Ayatullāh Khāminī'ī on 'id-e-ghadīr, the daily *Jumhūrī-e-Islamī*, 11.4.1370.
- 37 Ayatullāh Sayyid Muhammad Ridā Gulpāyḡānī, *Al-Hidāyah ilā man laḥū al-wilāyah fi wilāyat al-ab wa al-jadd wa al-faqīh*, comp. Mīrzā Aḥmad Šābirī Hamadānī, (Qum: 1383 H.Q.), 20-52.
 — Šāfi Gulpāyḡānī, Luṭfullāh, *Dharūrat wujūd al-hukūmah au wilāyat al-fuqahā'fi 'aṣr al-ghaybah*, Qum: *Dār al-Qur'ān al-Karīm*, 1415 H.Q.
 — Ayatullāh Šāfi, *Al-Aḥkām al-shar'iyah al-thābitah tā yataghayyar*, Qum: *Dār al-Qur'ān al-Karīm*, 1412 H.Q.
 — The letter of Ayatullāh Šāfi to Imām Khumaynī dated 26.9.1366 H.S.. Also refer to the article, *Majma 'e-Tashkhiṣ-e-Maṣlahat wa Jāyghāh-e-Qānūnī-e-Ān*, in the book *Didghāhhāy-e-jadīd dar masā'il-e-ḥuqūqī*, Dr. Ḥusayn Mehrpūr, Tehran, *Ittilā'ūt*, 1365 H.S.. The reply of Imām Khumaynī to the Secretary of the Guardianship Council, *Ṣahīfah-e-Nūr*, 20: 165.