

Wilayat al-faqih and Democracy*

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Are the Shi'i theory of *wilayat al-faqih* (guardianship of the jurist) and democracy compatible with one another? If they are not compatible, could the modification of one or both bring them into agreement with one another? If these two concepts are irreconcilably at odds, which should we reject in the interest of preserving the other? These three questions are of utmost importance to contemporary political thought in Iran. This chapter primarily discusses the potential convergences and divergences between *wilayat al-faqih* and democracy and offers a critique of current perspectives on the relationship between these two concepts.

Exploring the Relationship between *Wilayat al-faqih* and Democracy

Although the term *wilayat al-faqih* is immediately reminiscent of the Islamic Republic of Iran and its founder, Ayatollah Ruhollah Khomeini (d. 1989), the incongruity between *wilayat al-faqih* and democracy is not necessarily of the same kind as that between Islamic republicanism and democracy. *Wilayat al-faqih* is altogether distinct from Islamic republicanism.¹ Proponents of *wilayat al-faqih* believe that Islamic republicanism is a method of governance that would give rise to *wilayat al-faqih*—the two however are not the same. Similarly, the critics of *wilayat al-faqih* do not believe that a relationship necessarily exists between the two—they not only perceive an Islamic republic to be capable of existing irrespective of *wilayat al-faqih*, but they additionally believe that an Islamic republicanism minus the *wilayat al-faqih* principle is the Islamic republic

that was offered to the Iranian public via the Preamble to the Constitution, which gained widespread acceptance through the April 1979 referendum. What ended up being ratified as the Constitution in late 1979, then modified in 1989, and subsequently implemented by the two supreme leaders in the past quarter of a century is an amalgamation of *wilayat al-faqih* and Islamic republicanism. This amalgamation could be perceived as being a *wilayat*-based republicanism (*jumhuri-ye wila'i*)²—the sort of republic within which government organs perform their duties under the supervision of the supreme leader (*waliy al-amr*). *Wilayat*-based republicanism or traditional Islamic republicanism is an incomplete realization of *wilayat al-faqih* and is merely a subset of it. In this study, we set out to compare and contrast a democratic government with a form of governance that is based on “appointed and absolute *wilayat al-faqih*”, the latter representing the ideal order within which the concept of *wilayat al-faqih* has been fully realized.

The incongruity that may exist between *wilayat al-faqih* and democracy must be differentiated from any divergence between religion and democracy, or Islam and democracy, and also from any divergence between religious governance and democracy, or Islamic governance and democracy.³ Of course if someone already believes that religion and democracy are totally incompatible, there would be no need to address the questions that are being raised here—since it is a foregone conclusion for them. Similarly, for those who believe that religion is a private matter—that is, restricted to an individual's relationship with God, whose influence must not extend into the public sphere (essentially those who subscribe to radical secularism and believe that it is the foundation for democracy)—any kind of religious governance would be basically undemocratic. The relationship between *wilayat al-faqih* and democracy is subject to debate for someone who, first of all, does not believe *a priori* that there can be only dissonance between Islam and democracy and believes instead that democratic perspectives may be gleaned from Islamic tradition. Second, such a person does not find an Islamic government to be necessarily incapable of being democratic—more pertinently, this is someone who would allow for democracy to flourish in a religious society. Accepting the above two premises, we now take on the discussion of compatibility between *wilayat al-faqih*—representing a specific case of religious governance—and democracy.

The questions being discussed here are less than 32 years old. They became relevant in or about 1979 when the *wilayat al-faqih* concept was applied to the public domain. Debating these issues first took place exclusively among elites and prior to the practical experiences that ensued. The analysis and explanations that they have offered in answering these

questions are mostly general and often ambiguous. At this early stage, the proponents of *wilayat al-faqih* tried to portray this principle in a popular and democratic vein.⁴

Starting with the second decade, having experienced *wilayat al-faqih* in practice for ten years, inquiries into the matter began to spread among the general public rather than being exclusive to elites, among whom these concepts had been traditionally applied. Furthermore, the responses to these questions gradually became more specific, more exact, and much better clarified. The proponents of *wilayat al-faqih* who have responded to the aforementioned questions fall into two camps: those who have candidly proclaimed the principle of *wilayat al-faqih* to be entirely contradictory to democracy and those who, while dismissing democracy as a “western notion,” have defended a sort of “religious democracy” anchored upon the core principle of *wilayat al-faqih*.

Those who are critical of implementing *wilayat al-faqih* in the public sphere are equally devout Muslims and also fall into two groups according to their kind of concern regarding democracy. One group, believing that the “appointive” and “absolute” attributes of *wilayat al-faqih* are at the basis of the principle's incongruence with democracy, has attempted to bring the two together by stressing the elective and conditional stipulations of the Constitution concerning *wilayat al-faqih*. The second group has determined that implementation of *wilayat al-faqih* in the public sphere lacks any basis in Islamic jurisprudence—they find the divergence between *wilayat al-faqih* and democracy to be inherent in the two concepts. The depth of analysis and pervasiveness of the views that have been offered, in reply to the questions we raised at the outset, indicate the importance of this debate.

Defining Democracy

We will now go on to define “democracy,” followed by three sections on related topics. The first section examines the relationship between the appointive and absolute nature of *wilayat al-faqih* and democracy. In the second section we explore the relationship between elective and conditional *wilayat al-faqih*—and also that of the guardianship of the *faqih*—and democracy. In the third section we discuss the means of governing an Islamic society according to democratic standards. The hypotheses that we are about to subject to scrutiny in this chapter are threefold: first, *wilayat al-faqih* and democracy are not compatible; second, the incompatibility between *wilayat al-faqih* and democracy is essential—reforming one or both of them would not bring them into harmony. From this perspective, Islamic democracy would be a contradiction in terms, if it were to be based

on *wilayat al-faqih*. Third, Islamic society can be governed via democratic means.

It may seem that democracy would be a well-known concept, but the effort that has been exerted to approve or reject it in Iran indicates that many of those who have commented on the subject did not have a clear understanding of it. Democracy has been mistaken often for popularity or for populism. To prevent probable misconceptions in our discussion below, it is best to put forth an outline of democracy in the context of our discussion. In doing so, we emphasize those aspects of democracy that would bear comparison with the corresponding features of *wilayat al-faqih*.

One could describe democracy as an answer to a question in politics: who or what political system is empowered to decide for the public? Three types of answers have been offered for this question: autocracy, aristocracy, and democracy. In an autocracy, the assessment of public interest and decision making in the public domain rest with one individual—all legitimate power to govern stem from that individual. No worldly authority can oversee his actions—he is above the law, unaccountable, and invested with absolute authority, and can exert unchecked power to manage the affairs of society. In an aristocracy, the ultimate power resides with an elite class—this group of people is also not accountable to the public. In a democracy, determination of public interest and decisions on behalf of the public are based on the approval of the public at large—not on the approval of a specific individual or a group of elites. In a democratic regime, those executing authority in the public domain are the people's elected representatives, whose charter is to serve in their clients' (i.e., the public's) interest. A democratic government is responsible to the public. It comes to power through the will of the people, and, at a certain time, peacefully transfers its power to govern to the succeeding democratically elected representatives. The laws of democratic societies are established through a process ensuring public consent and are liable to change according to public will.

To state it more exactly, democracy is the politics of the modern world. It is an approach to instituting government—the purpose of which is to minimize the likelihood of making erroneous decisions in the public domain, through maximizing public participation in the decision-making process and diminishing the role of the individual in making political decisions and shaping public policy. Proper distribution of political power throughout society is one of the requirements of democracy. A democratic government is elected through freely expressed majority vote in order to govern for a limited term. The equal right to choose—and to be chosen—is among the fundamental principles of democracy. In a democracy, decisions that affect society must gather consensus for support. Therefore, public oversight of decisions affecting the public domain and distribution

of equal rights amongst the citizenry, in order to impose oversight over decisions regarding the public domain, are two of the pillars of democracy.

The main attributes of a democratic regime are as follows:

- a. Holding free and all-inclusive elections.
- b. Establishing transparent and accountable government.
- c. Respecting civil and political rights.
- d. Giving rise to a civil, or a democratic society.

To complete our framework of democracy, now we should ask: what are the characteristics of an undemocratic regime? The following six characteristics are identified:

- a. Sanctioning special privileges in the public domain for an individual or a class of elites (such a distinction is contrary to the fundamental principle of equal rights).
- b. Permanency in holding on to an office, or lacking peaceful transfer of power, following a predetermined term.
- c. Holding an office or an authority in that office above the law.
- d. Lacking oversight of the leadership—that is to say, a lack of accountability of the leadership to the public.
- e. Having absolute or unchecked power vested in an individual or a group (even if it is sanctioned by the Constitution).
- f. Lack of regard for public demand in changing the law.

Appointive, Absolute *Wilayat al-faqih* and Democracy

We now proceed to describe the theory of appointive, absolute *wilayat al-faqih* and explore its potential convergence with and divergence from democratic principles. The following four principles are identified as forming the basis of the theory of appointive, absolute *wilayat al-faqih*.⁵

The first principle is *wilayat*.⁶ It means having responsibility for, acting on behalf of, and having jurisdiction over the affairs of others. There is inequality in the sphere of *wilayat* (*hawzat al-wilayat*), encompassing the public sphere. The general public is considered to be incapable of making pious decisions, and unable to exert control over public domain. They need religious oversight, since they lack religious jurisdiction over the public domain. Legitimacy of all decisions and actions in the public domain depend on the approval and authorization of the supreme leader, called the *waliy al-amr*.

Another meaning of *wilayat* over people is their guardianship, which is fundamentally different from representing them. The citizenry—having been placed in care of the supreme leader—has no say in the appointment or dismissal of the *waliy al-amr*, and no authority to oversee his conduct of *wilayat*, or his personal conduct. The opinion of the supreme leader constitutes the measure of proper decisions regarding the public domain. It is expected that the public will conform to and acquiesce in the views of the supreme leader—not the other way around. All public domain functions derive their legitimacy through their attribution to the supreme leader. The most important religious duty of the people toward the supreme leader is to accept his verdicts, obey his edicts, and help him succeed. *Wilayat* is obligatory, not elective. It is permanent, and lifelong, not transitory. Furthermore, it is binding on all human beings, without any exception or condition.

The second principle is appointment,⁷ which refers to appointment by the divine ruler as opposed to election by the people. Above and beyond comprising the legitimacy to govern, it implies selection and appointment of the qualified person to reign over the people on behalf of the last Shi'i imam. Identifying the individual who possesses the proper qualifications is a function of the Shi'i juridical elite. In selecting the supreme leader from among the Shi'i juridical elite, the public cannot be consulted since they lack the knowledge to properly assess the merits of the supreme leader. It is generally held that the installment and dismissal of the supreme leader is a divine act. In case the leader is found to have forfeited his qualifications as a jurist, or is found to have become unjust, other elite jurists would consider the leader's supreme status to have lapsed. The ruler (or the supreme leader) is responsible only to God—no human being has the authority to oversee his actions. Other elite jurists can only inquire into his qualifications in order to declare him to be fit for the supreme office. In other words, beyond the supreme leader (*waliy al-faqih*) is only God.

The third principle is absoluteness.⁸ The jurisdiction of the leader (*waliy al-faqih*) encompasses matters of sovereignty in the public domain—all matters fall under this jurisdiction. The leader manages the society based on his determination, or that of his appointees. His authority is considered to be akin to that of the Prophet and imams and not confined to religious matters, since he can rule on matters beyond religious concerns based on what he deems to be in the interest of the state. His decrees are binding on everyone, just as all other religious decrees must be obeyed and acted on. In case of any conflict between decrees issued by the *waliy al-faqih* and other subsidiary Islamic standards, the former prevails. While the Constitution draws its legitimacy from the leader's sanction of it, it is clear that the *waliy al-faqih* is not bound by the laws of mankind, including the

Constitution. The decrees of *waliy al-faqih* carry the force of law; if they appear to be contrary to the law, his decrees take precedence. The judicial, legislative, and executive branches of government, the armed forces, and the media are all his organs, which function independently of each other, but are under the control of one leader—the *waliy al-amr*.

The fourth principle is jurisdiction (*al-faqahat*), which is the most important requisite for leading an Islamic society. Islamic jurisprudence plays an essential role in the planning and management of an Islamic society. All political decisions must be in accord with the religious fundamentals. Islamic jurisprudence is capable of providing solutions to all political, economical, cultural, military, and social problems of the world, and, therefore, capable of guiding the greater Islamic world and the non-Islamic constituency. Politics is a branch of the Islamic jurisprudence and a part of the religious experience. Islamic jurisprudence provides a pertinent and complete theory for managing the human race, and guiding the human experience from the cradle to the grave. Therefore, *wilayat* or administration of public domain is held to be the exclusive right of Muslim jurists.

Proceeding from this analysis, it is possible for us to conclude that the theory of appointive, absolute *wilayat al-faqih*—in all four of its principles—is contradictory to democracy. In fact, this theory provides for a religious autocracy, or, at the very best, what may be viewed as a clerical aristocracy. In fact it has been claimed that the *waliy al-faqih*, as the operative of the divine on earth, is akin to God, for "he cannot be questioned for his acts, but they will be questioned for theirs."⁹ He represents a permanent, arbitrary, sacred, and absolute authority in the temporal world. In other words, this theory sustains a religious aristocracy, which is fundamentally distinct from democracy.

We can identify the following contradictions, arising out of each of the four appointive, absolute *wilayat al-faqih* principles:

A. Guardianship (*wilayat*): Religious guardianship requires that the general public in their capacity to make pious decisions and influence matters of the public domain not be deemed equal to the jurists. In contrast, in a democratic system, everyone is believed to have the same rights as anyone else and the right to influence the public domain. In order to administer the public domain, the citizenry is empowered to elect a representative government rather than being rendered incapable or unqualified to make proper decisions, and requiring paternal oversight.

Furthermore, the standards of proper conduct in the public domain are the opinions and directives of the *waliy al-faqih*, which the public is bound to obey, whereas in a democracy, public officials are expected to hew to the

will and sentiment of the public they represent. According to the theory of *wilayat al-faqih*, everyone must seek the permission of *waliy al-faqih* for any decision or action in the public domain. The situation is reversed in a democracy—all public officials are supposed to seek the people's consent in order to serve in the public domain.

B. Appointment (*intisab*): Democracy is a bottom-up approach to government while the appointive *wilayat*-based state is a top-down regime. People elect or dismiss their government officials in a democratic regime, whereas in an appointive regime, members of the general public have no say in the installment or removal of the ruler. The notion of appointment is ineluctably at odds with the notion of election. Without exception, all political assignments in a democratic regime are limited to a specified term. In the appointive *wilayat al-faqih*, however, the leader is practically appointed for life, and terms in office for other public officials are determined by him.

In terms of functions, the elected representatives of the people are charged with oversight over the government of a democratic regime, and the government is accountable to the people it governs. In appointive rule, the ruler is only responsible to God and is not held responsible to any human being for his conduct.

C. Absolutism (*itlaq*): All government officials are assigned limited powers in a democratic regime—there are checks and balances. In appointive, absolute *wilayat al-faqih*, the leader possesses absolute and unchecked power. He is not only above the law, but he sanctions the law and can repeal the Constitution as well. In contrast, no one stands above the law in a democratic regime and separation of powers is fundamental to a democracy. In a *wilayat*-based state, the judicial, executive, and legislative branches of government, in addition to the armed forces and the media, are the instruments of the leader (*waliy al-faqih*) and function under his orders. The heads of the three branches and the key institutions of the government are, in effect, his deputies.

D. Jurisdiction (*faqahat*): There is no special public privilege that is set aside for any particular group in a democratic regime, whereas governance in *wilayat al-faqih* is the exclusive prerogative of Shi'i Muslim jurists. In a democracy, society is managed based on secular principles; religious jurisprudence is not expected to provide directives for political, economical, cultural, and other matters. In contradistinction, in the *wilayat al-faqih* system, Shi'i jurisprudence provides an entire theory of governance in all aspects of human existence, from the cradle to the grave.

The principal divergences between appointive, absolute *wilayat al-faqih* and democracy are so clear that they need no further proof—it is readily obvious that these principles are not compatible. A question should be raised here: is referring to public opinion not warranted under any circumstances, according to the concept of *wilayat al-faqih*? The answer is a conditional affirmative. Referring to public opinion may be warranted in minor cases, and only where the leader's position is not undermined as a result. In any case, he is the final authority—he can overrule the public's opinion at any time. Another case may be that if he does not resort to public opinion, he may come across as being dictatorial. In the second case, referring to public opinion is only warranted in a do-or-die situation—to get past the circumstantial necessities.¹⁰ It is evident that once the need is overcome, public opinion would again become irrelevant, and that referring to public opinion under such circumstances is not the same as free elections held in democratic regimes.

Among the proponents of appointive, absolute *wilayat al-faqih* theory, the few who have called it democratic are clearly wrong. Their position can only be adopted either because of a lack of understanding democracy, or for future deniability or cover-up. For example, Javadi Amoli and Mesbah Yazdi, who are among the proponents of this theory, have stated candidly that this theory is incompatible with democracy.¹¹ But others among them, while completely rejecting "western democracies," are promoting a "religious democracy."¹² In effect, they are only playing with words—subscribing to appointive, absolute *wilayat al-faqih* ideology is to deny democracy in all its forms. Apparently, the only aspect of democracy that may have appealed to this group is its popularity. Otherwise, touting "religious democracy" is a popularity ploy. The sort of playing with words, which this group has resorted to, is the same as deceiving the public. Proponents of appointive, absolute *wilayat al-faqih* find democracy neither desirable nor beneficial. In their view, the citizenry must be trained to only blindly follow and unquestioningly obey the edicts of the religious leaders and prevent them from conceiving opinions to the contrary.

Elective, Conditional *Wilayat al-faqih* and Democracy

Considering the great difficulties that appointive, absolute *wilayat al-faqih* theory faces, both conceptually and factually, an alternative view has become more prominent among those subscribing to *wilayat al-faqih*. In their approach, care has been taken to strike a balance between *wilayat al-faqih* and democracy.

The first attempt at merging *wilayat al-faqih* in the public sphere with democracy was made in the past century by Mirza Muhammad Husayn

Na'ini (1860–1936). While keeping the general appointive *wilayat al-faqih* principles intact, and taking into account the lack of public confidence in the clergy as the political reality of the time, he allowed the representatives of the people to constitute a government that remained subject to religious oversight—hence, the conditional government.¹³ It was made clear that if for any reason (e.g., upon regaining popularity) the clergy were to revoke their permission, government would thenceforth become illegitimate.

In the second step toward legitimizing the political rights of the public independent of the jurists, the concept of public rule with juridical oversight, offered by Muhammad Baqir Sadr,¹⁴ has been validated. According to this theory, the clergy have more of an oversight function and right of approval rather than an administrative role, although the supreme overseer is found and appointed among them through traditional procedure rather than by means of democratic elections.

In the third step, the jurists in Qom advance the theory of elective, conditional *wilayat al-faqih*, the evolved form of which was assembled by Ayatollah Hossein-Ali Montazeri Najaf-Abadi.¹⁵ In his approach, three of the principles contained in the appointive, absolute *wilayat al-faqih* theory have been modified. First, by expanding on the selection process for choosing a leader from among multiple qualified jurists prior to his appointment by the divine ruler, the selection of a ruler from among the slate of qualified candidates ends up being based on public volition. Considering traditional Shi'i doctrine, allowing for public opinion to influence the selection of the supreme leader is a significant step toward democratization of the political process. Second, although the term "guardianship" (*wilayat*) has been retained in this theory, the legal ramifications of it are different. In the first theory, *wilayat* was a religious edict, issued by the divinely-appointed ruler to compensate for the laity's inadequacies in the public domain, whereas in the new theory *wilayat* is a binding contract and a form of a general power of attorney establishing independent jurisdiction over someone with the ruler's consent. On this basis, the government would be a form of religious treaty between the people and the sovereign.

Finally, as a consequence of the government having its bases in a contract, the terms and conditions of this agreement—such as the imposition of a time limit for holding office and the like, the collectivity of which is called the Constitution—would be legitimate. On this basis, the resulting government would not have absolute power, since it would be limited by the Constitution, according to the terms and conditions of the agreement. All the elements of a healthy relationship between the general public and those entrusted with power to rule can be achieved by this approach. The jurisdiction requirement and the supremacy of jurisdiction remain intact as the principal requisites in the new theory of leadership.

Analysis of the recent thirty-some years of *wilayat al-faqih* in action has inclined the author of the new theory to emphasize the advisory and oversight dimensions of leadership and reduce its administrative aspects.¹⁶ It is clear, however, that for prevailing religious motives this oversight is none other than *wilayat*, and that it occurs on account of the religious obligation felt by the overseeing jurist.

The democratic aspects of this theory are enumerated as follows:

- A. All public officials—without exception, even the leader—are elected through general elections, and the public participates in electing the government.
- B. As a consequence of recognizing the public as being a party to an agreement or a contract, the public's right to self-determination in the public domain is established; accepting this fact is seminal to democracy.
- C. The public right to take part in the lawmaking process as a condition of the constitutional agreement provides the bases upon which society would democratize.

Based on the preceding points this theory could be called "religious democracy" or "Islamic republicanism." Its conformity to Shi'i Islamic principles is protected through the supreme leader's guardianship and oversight. Concurrently, the society is managed democratically. However, the resulting religious democracy would be limited, and in a few respects different from democracy, on account of the fact that acceptance of an exclusive right for jurists to hold the highest office in society, under the auspices of the supreme guardianship, causes the first discrepancy between this theory and democratic principles. Accepting such a right is contingent upon jurisprudence being effective in addressing the challenges of political and social administration. Proving Islamic jurisprudence to be capable of producing effective solutions in such secular matters is extremely unlikely.

Furthermore, the requirement of jurisdictive supremacy for assuming the leadership diminishes the elective qualities of this approach. On the one hand, if the qualifying merits are concentrated in one person, then election becomes irrelevant. On the other hand, the ability to recognize and qualify supremacy, considering the broad spectrum of Islamic jurisprudence and the variety of opinions held by jurists, effectively shields the selection process from the public. The practical difficulties associated with this approach are above and beyond the theoretical criticisms that may be directed at this principal requirement.

A final reason for skepticism is concerned with the response to the following question: what would it be like if there were widespread public discontent with the supreme leader's stance? In a circumstance where

the majority of the people moved toward a direction and the leader (*waliy al-amr*) found that direction inappropriate or undesirable and stated his ruling on the matter as such and the majority still refused to follow his advice, would he resort to force, in order to establish the validity of his views, albeit against the public will? Or would he acknowledge the will of the people and his lack of support among them on account of their opposition to him, and consequently resign, resort to cultural and educational activities to convince the public of the merits of his view, win the majority over, and regain his rightful position as the supreme leader again? The response is not clear.

Democracy in a Religious Society

It became evident through the discussion in the previous sections that two possible conclusions may be reached: first, the "appointive, absolute *wilayat al-faqih*" and democracy are completely incompatible and these two concepts are diametrically opposed, just as the Platonic philosophizing, the Iranian theory of kingdom, or the mystic's theory of the perfect human reign would stand in contradiction to democracy. Second, the "elective, conditional *wilayat al-faqih*" or the concept of the elected supreme leader's guardianship is a form of limited democracy, which differs from democracy in three respects. Although according to the leader's capacity the religious order may extend far into the democratic terrain, the reverse would also be true in the case of narrow-minded jurists.

Up to this point, we obtained the two comparisons above, regardless of our evaluation of democracy or either of the two religious theories as positive or negative. In this section we are about to answer two important questions posed as follows: (1) Based on religious principles, how credible are the two *wilayat al-faqih* theories? (2) Considering the definite discord between the first theory and democracy and the relative incompatibility between the second theory and democracy—between *wilayat al-faqih* and democracy—which is more suitable for managing the affairs of a religious society?

Critique of the First and Second Theories

Regarding the first question, the concept of *wilayat al-faqih* is a subject of dispute in Shi'i Islamic jurisprudence.¹⁷ Most but not all jurists have accepted this principle when it falls under the category of obligations that must not be left unattended, such as the guardianship of orphan children. When the legal scope of this principle was extended, fewer people subscribed to it. The extension of *wilayat al-faqih* into the public domain is

viewed as clerical governance (i.e., in the political arena), and is not recognized by most jurists,¹⁸ meaning that in their view, there is not a sufficient basis in Islamic law to support this claim. The absolute *wilayat al-faqih* in the public sphere, specifically emanating from Ayatollah Khomeini, has been assumed by some (not all) of his students as being valid. In any case, the author believes that the theory of appointive, absolute *wilayat al-faqih* lacks any basis in reason, or in Islamic law.

The theory of elective, conditional *wilayat al-faqih* and the elected supreme leader's guardianship is a young one, which has not been adopted with much enthusiasm by the jurists in traditional Shi'i realms. Its supporters are often found among intellectuals and political activists. From an Islamic jurisprudential perspective, two of the principles of this theory are subject to debate: one, the requisite of jurisprudential supremacy of the overseer, and two, the assumption of Islamic jurisprudential capability in such spheres as management, politics, and social planning. The second point has not been subjected to careful analysis and debate among the jurists and religious scholars. The fact that every act, be it individual or social, must be according—or at least, not be contradictory—to Islamic principles can be assured through consultation with an advisory panel, such as the council in charge of the Supervising Committee of Senior Clergy (*hay'at nazarat al-mujtahidin*) in the first Iranian Constitution (*Mashruti*) or the Guardianship Council (*Shura-ye Negahban*) in the Preamble to the Constitution of the Islamic Republic, and does not necessarily require supreme guardianship (*wilayat al-faqih*). In any event, a number of contemporary jurists, including my great teacher Ayatollah Montazeri, have stated positions concerning this theory. The author believes that both issues rest on a more basic understanding of the purview of religion, or, more precisely, of Shi'i Islamic jurisprudence. Jurisprudential supremacy is not a requirement for social management and one cannot expect Islamic jurisprudence to supply the required insight for managing society. Therefore, the jurisdiction principle in the aforementioned theory is insufficient.

The conclusion arrived at above suggests that *wilayat al-faqih*, be it of a religious or civil type, appointive or elective, absolute or conditional, lacks any credible religious basis for its deployment in the political sphere. The jurists who have accepted certain types of *wilayat al-faqih* have in fact investigated the matter with a preconceived notion of religion, prior to either reasoning through or testing their specific hypothesis. They have assumed that a complete religion must have provided a specific and constant model for managing public policy and that without assuming political power, it is not possible to establish such a religion. Furthermore, the purpose for establishing religion is to execute the edicts of Islamic law

(Shari'a). For this last purpose, only jurists are qualified to apply the religious law; hence, establishing religious governance in accordance with the principles of *wilayat al-faqih* is necessary, or even inevitable, from this perspective.

When one takes into consideration the historical context of Islam, the Qur'an, and the conduct of the Prophet and the Shi'i Imams, it is possible for us to arrive at the following conclusions:¹⁹

A. Islam is not limited to the individual's relation with God; it also includes the social realm. The social directives of Islam are furthermore not limited to providing ethical guidance and generating behavioral precepts; they also include injunctions to be carried out.

B. Islamic society is not compatible with all political systems. Islam has clearly declared certain political settings to be illegitimate, and has forbidden Muslims to establish such political systems.

C. In the collective teachings of Islam, its general concepts and social protocols, one can extract a specific or tens of other general political models, none of which would be illegitimate and none of which alone would suffice for a complete political system with all of its necessities and specifics. In other words, Islam does not offer a specific and constant model for managing the politics of all societies, and far be one for all times (in other words, Islam does not provide an unchanging blueprint for a universal government).

D. The lack of such details in Islamic thought is due to the fact that they are variables. The religion, which claims to be constant—beyond place and time—would be subject to change, if it were to take on transitional matters. Additionally, Islam acknowledges that human faculties are capable of finding appropriate solutions in these fields. In other words, politics is a matter of intellect, and the ability to reason is a human trait. It is true that a pious individual must satisfy the requirements of his religion in all of his interactions, but acting in accord with the general principles and common protocols of religion does not negate the fact that politics is a human endeavor requiring political wisdom.

E. One cannot expect to find knowledge of politics, economy, management, and sociology in Islamic jurisprudence. At the same time, one cannot do away with the body of constitutional, commercial, criminal, and other laws. Islamic jurisprudence provides a legal framework in such branches of law as political law, commercial law, civil law, criminal law, and the like. Branches of law cannot be expected to provide specific political and economic policies. Although legal council is indispensable in a variety of fields, entrusting management, economy, commerce, politics, and a whole host of other specialized activities to lawyers would not produce an optimum

result. *Wilayat al-faqih* has risen out of a sort of false expectation of the purview of Islamic jurisprudence.

F. Obligatory Islamic decrees affecting the public domain do not necessarily warrant religious governance. The necessity for carrying out such edicts may as effectively be accomplished through other means—the pious conscience and the collective will of the public in a civil Islamic society could see to it that all its obligations are fulfilled. There is a difference between the law and religious obligation. The law must pass through a formal process designed for close scrutiny and consensus gathering, including scrutiny and adoption by the people's representatives. Religious obligation is not the same as legal obligation. Similarly, committing a sin has a different consequence than breaking the law. An individual is not necessarily punished during his lifetime for having committed a sin or for having failed to fulfill a religious obligation. Religious leadership aims to convince its followers to voluntarily take on a course of action, or relies on the individual to abstain from what may be harmful, based on the individual's recognizance and free will. If a religious decree is to carry the force of the law—such that it may carry with it worldly punishment—it must put on a legal suit, go through the lawmaking process, and become the law.

G. More so than being a religious obligation, *wilayat al-faqih* is a reflection of the Iranian theory of kingdom and Eastern despotism in the mind and essence of Shi'i jurists, which has also been corroborated by the Platonic theory of the philosopher-king. Its absolutism can be traced in the absolute *wilayat* of the perfect human being in Ibn 'Arabi's Sufism. It seems that traditional Islamic jurisprudence imbued with such notions as the principle of non-*wilayat*,²⁰ the principle of sovereignty (all people are the masters of their properties),²¹ and the principle of consensus (rulership over the people is not legitimate without their consent)²² cannot be compatible in the public sphere with the notion of *wilayat al-faqih*.

How to Solve the Contradiction of Wilayat al-faqih and Democracy?

Regarding the second question, the choice between *wilayat al-faqih* and democracy, in the event of unresolved incompatibility between the two, is democracy. Through the discussion in answering the first question, we concluded that differences between *wilayat al-faqih* and democracy are not predicated on any religious requirement, and are rather a matter of rational evaluation. In such a case, the alternative that stands to yield the most benefit is the preferred choice. *Wilayat al-faqih* has no credible foundation in Islamic jurisprudence. It is a notion that was conceived in the minds of a group of honorable jurists through a specific reading of a handful of

Islamic passages. Refuting *wilayat al-faqih* does not in any way undermine any teachings, requirements, or obligations of Islam. I believe democracy is the least erroneous approach to the politics of the world ("least erroneous" does not mean perfect or even error free.) Democracy is a product of reason, and the fact that it has first been put to use in the West does not preclude its utility in other cultures; reason extends beyond geographical boundaries. One must adopt a valid idea, regardless of its provenance, in accordance with 'Ali b. Abi Talib's counsel: "Look into what is being said, not at who says it."²³ Adopting a democratic approach for political management is as valid in a religious society as it is in a nonreligious one. A nonreligious society as well as one consisting of a mix of various religious beliefs and ideological subscriptions can be managed effectively in a democratic manner, as can a religious and pious society. The claim that radical secularism is indispensable to democracy is only an opinion. In any case, contemplating the relationships between Islam and democracy or the feasibility of a religious democracy is outside the scope of this chapter. The author believes that it is possible to manage an Islamic society using a democratic approach. If a society consisting of a Muslim majority decides to observe Islamic values and considerations, it can incorporate these Islamic values through democratic means. That is to say, Islam as a religion can coexist with a democratic political system in a society.²⁴ In this chapter, I have assumed the advantages of democracy to be self-evident. No doubt this stance would be debatable to those believing otherwise. In any event, the author's subscription is to a democratic approach within Islamic societies.

Notes

²³The first draft of this chapter was presented at the 36th Annual Conference of Middle East Studies Association of North America (MESA), Washington, DC, November 2002.

1. The relationship between *wilayat al-faqih* and Islamic republicanism (*jumhuri-ye islami*) has been discussed previously in my *Wilayat-Based State (Hukumat-e wila'i)* (Tehran, 2008), fifth edition, chapters 11 and 12, pp. 160–219.
2. The term "*wilayat-based republicanism*" (*jumhuri-ye wila'i*) has been described in the article "From Constitutional Monarchy to *wilayat* Based Republicanism" (*Az mashrutah-ye saltunati ta jumhuri-ye wila'i*), August 2002, based on a speech given at Columbia University, New York; found online at www.kadivar.com.
3. A number of points have been addressed about the relationship between religion and democracy in the article "Religious Democracy" (*Mardum salari-ye dini*), last accessed on, February 23, 2011, available online at www.kadivar.com.

4. As an example, one could point out Ayatollah Khomeini's usage of the term "democracy" during the Paris interviews (Fall, 1978), and also Morteza Motahari's similar usage in his speeches on Islamic Revolution and Islamic Republic in 1978 and Spring 1979.
5. Theoretical basis is laid out by the author in *The Theories of State in the Shi'ite Fiqh (Nazari-yeh-ha-ye dawlat dar fiqh-e shi'i)* (Tehran, 2008), 7th edn, second and fourth theories.
6. The subject of *wilayat* (guardianship) has been expanded at length in my *Wilayat-Based State*, 160–219.
7. The subject of *intisab* (appointment) has been expanded in the series of articles "Hukumat-e intisabi" (Appointive State). Nine articles in this series have been published in the monthly *Aftab* (Tehran, 1379–1381), accessible online at www.kadivar.com.
8. The subject of *itlaq* (absoluteness) has been expanded in the article "Ghalamru-e Hukumat-e Dini az Didgah-e Imam Khomeini" ("Imam Khomeini's Perspective on the Scope of the Religious State") in *Dagh-dagheh ha-ye hukumat-e dini* (Anxieties of Religious Governance) (Tehran, 2000), 111–134.
9. Qur'an 21:23.
10. Ayatollah Sheikh Nasser Makarem Shirazi in his essay "Anwar al-faqaha," *Al Bai'* (Qom, 1991), 1:516.
11. Cf. Mohammad Taghi Mesbah Yazdi, *Pursish-ha wa pasukh-ha* (Questions and Answers) (Qom, 2001) and Abdollah Javadi Amoli, *Wilayat al-faqih; Wilayat Fiqh wa adalat (Wilayat al-faqih: Guardianship of Jurisprudence and Justice)* (Qom, 2000).
12. In this midst, usage of the term "*Mardum Salari-ye Dini*" (religious democracy) by the second Iranian *waliy al-faqih*, Ayatollah Ali Khamene'i, is worth mentioning.
13. Mirza Muhammad Hussayn Na'ini, *Taubih al-umma wa tanzih al-milla* (Exhortation of the Faithful and Purification of the Nation) (Tehran, 1960). For an analysis of Na'ini's point of view, see my *The Theories of State in the Shi'ite Fiqh*, the fifth theory.
14. Sayyid Mohammad Baqir Sadr, *Al Islam yaqud ul-hayat* (Beirut, 1979). For further analysis, see my *The Theories of State in the Shi'ite Fiqh*, the sixth theory.
15. Sheikh Hossein-Ali Montazeri Najaf-Abadi, *Dirasatun fi wilayat al-faqih wa fiqh al-dawlat-e islami-yeh* (Qom, 1988–1991), 4 vols. For an analysis of this work, see my *The Theories of State in the Shi'ite Fiqh*, the seventh theory.
16. The political theory of Ayatollah Montazeri that I criticized could be called Montazeri I. Montazeri II is the subject of another chapter. Some of the recent points of view expressed by Ayatollah Montazeri in his book *Didgah-ha* (Points of View, or Perspectives), 4 vols., particularly in the excerpt "*Wilayat al-faqih and the Constitution*," are worth studying, last accessed on, February 23, 2011, available at www.montazeri.com.
17. See Ayatollah Khomeini, *Kashf al Asrar* (Revealing the Secrets) (Tehran, 1979), 185.

18. Ayatollah Sayyid Abulqasim Khu'i in his *Al-Masa'il wa rudud* (Questions and Answers) (Qom, 1411 AH), remarked: "the greatest Shiite scholars do not agree with it."
19. These points have been discussed sporadically throughout my *Dagh-dagheh ha-ye hukumat-e dini*. Now they are clustered in one place.
20. Much has been discussed in my *Hukumat-e wila'i*, chapter 16, 242–245, about the principles supporting the lack of *wilayat*.
21. See Montazeri's *Dirasat*, 1:495, the Third Principle, for the framework in monarchy.
22. See Ibn-e Fahd-e Hilli, *Al-Rasa'il al-'Ashar* (The Ten Theses) (Qom, 2000), thesis 9, case 9.
23. Imam Ali, *Nahj al-balagha*, ed. Sobhi Saleh (Beirut, 1387 AH).
24. I explained the issue in the article "Islam and Democracy, Compatibility or Incompatibility?", accessible online at www.kadivar.com.

Middle East Today

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A Brief Note on Transliteration and Dating Conventions

In transliterating Arabic names and words, the usual diacritics have been dispensed with, except for the *ayn* and the *hamza*. Special diacritics for other foreign words in the Latin script (e.g., in German and Turkish) have usually been retained.

All dates are Common Era, unless otherwise specifically indicated.

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