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Khomeini's Concept of Governance of the Jurisconsult (*Wilayat al-Faqih*) Revisited: The Aftermath of Iran's 2009 Presidential Election

Hamid Mavani

The serious crisis that has unfolded after the June 2009 presidential election in Iran exposed the absolutist nature of the state's highest religious authority, and the urgent need to critically interrogate Ayatollah Khomeini's concept of governance of the jurisconsult (wilayat al-faqih). Jurists and scholars have been attempting to devise a model in which sovereignty belongs to the public by basing their arguments on historical, jurisprudential, theological, philosophical, and extra-religious frameworks to present state models which allow for public sovereignty and challenge the notion of divine sovereignty inhering in the jurisconsult.

The prediction of Ayatollah Hoseyn-'Ali Montazeri (d. 2009)¹ that the doctrine of *al-wilaya al-mutlaqa* [the all-comprehensive and absolute authority of the jurisconsult] could degenerate into religious and clerical despotism [*estebdad*] seems to have come true in a most glaring form: the political situation after the country's June 2009 presidential election. Protesters who believed that massive fraud and vote rigging had occurred were met by a brutal and forceful reaction from Ayatollah 'Ali Khamenei, the jurisconsult [*vali-ye faqih*] who occupies the Islamic Republic's supreme position. In his first post-election Friday prayer service, he proclaimed categorically that he would tolerate no more protests or challenges to the validity of President Ahmadinejad's re-election with a remarkable 62% of the electoral votes and an impressive turnout of 85% of all eligible voters. Construing this as a sign of divine grace and endorsement, he equated any dissent or questioning with the "greatest crime"² one can commit against

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1. It is ironic that the person who insisted on placing the concept of the governance of the jurisconsult in the 1979 constitution and institutionalized it become the most vocal dissident and opponent of its adherents' excesses and its mode of implementation. Montazeri made the following remark during discussion of the draft constitution in 1979: "Let the gentlemen be sure that we [the Assembly] will never endorse a constitution that does not include the issue of *velayat-e faqih* and laws based on the Book and *sunna*." S. Saffari, "The Legitimation of the Clergy's Right to Rule," *British Journal of Middle Eastern Studies*, Vol. 20, No. 1 (1983), p. 71. Montazeri had written a four-volume Arabic-language work to justify the legitimacy and validity of Khomeini's concept by citing Qur'anic verses and hadiths, as well as by using reason [*aq'l*]. Hoseyn-'Ali Montazeri, *Dirasat fi Wilayat al-Faqih wa Fiqh al-Dawlat al-Islamiyya* [Studies on the Governance of the Jurisconsult and Jurisprudence of the Islamic State] (Qom: al-Markaz al-'Alami li-l-Dirasat al-Islamiyya, 1988).

2. "Rahbar-e Iran: Sa'ati pas az Entekhabat beh Mokhalefan Payam Dadam" ["Leader of Iran: I Issued a Message to the Opponents One Hour after the Elections"], *IranianUK*, October 28, 2009, <http://tehranlondon.com/article.php5?id=43128>. Ayatollah Ahmad Khatami (not to be confused with former president Mohammad Khatami), an avid and enthusiastic supporter of the present government, said in his Friday sermon that anyone who doubts the election's results' validity has committed

[Continued on next page]

the nation of Iran. In addition, he signaled to the other two presidential candidates, Mir Hossein Mousavi and Ayatollah Mehdi Karroubi, that they would be held accountable if any more blood was shed as the state strove to restore order and normality.

This was a veiled threat to the protesters and a signal to the hardliners in the Revolutionary Guards (*Sepah*) that they had some degree of official permission to use coercive methods while putting down the protests.³ This arbitrary and excessive use of discretionary authority opened the still ongoing discourse on the merits of the concept of *wilayat al-faqih* [or *velayat-e faqih* in Persian, i.e., governance of the jurisconsult], which currently lacks any checks and balances.

When Ayatollah Ruhollah Khomeini (d. 1989) originally promulgated this concept in a 1970 series of lectures delivered in Najaf, Iraq, he relied on both rational and traditional proofs to buttress his case that during the concealment of the messianic infallible Imam,⁴ whom believers hold went into occultation in 941,⁵ the jurisconsult has a mandate to implement Islamic rulings not only in matters of devotion and personal affairs, but also in the realm of the social and the political.⁶ In other words, his prerogative

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a sin, “Ahmad-e Khatami ‘Ozv-e Majles-e Khobregan-e Rahbari: Har kas Beguyad dar Entekhabat Taqallob-e Gostardeb Shod, Gonah Kardeh” [“Ahmad Khatami (Member of Assembly of Experts): Anyone who says that the Elections were Rigged has Committed a Sin”], *IranianUK*, June 30, 2009, <http://tehranlondon.com/article.php?id=39107>; “Ayatollah Khamenei: Hameh Bayad az Ra’is Jomhur-e Montakhab Hemayat va beh ow Komak Konand” [“Ayatollah Khamenei: Everyone Should Support and Help the Elected President”], *IranianUK*, June 13, 2009, <http://tehranlondon.com/article.php?id=38407>.

3. “Ayatollah Khameneh-i: Showra-ye Negahban Tanha Marja’-e Residegi beh Shekayat-e Entekhabati Ast” [“Ayatollah Khamenei: Council of Guardians is the Only Source for Investigating Electoral Irregularities”], *IranianUK*, June 19, 2009, <http://tehranlondon.com/article.php?id=38671>.

4. President Mahmud Ahmadinejad has been exploiting the concept of the messianic Imam’s return (millenarianism) to enhance his religious legitimacy and to give the impression that this figure has somehow endorsed his appointment. One finds such eccentric ideas in several of his statements, such as when he told Ayatollah ‘Abdollah Javadi-Amoli that he felt a “halo of light” around himself while delivering his speech in November 2005 to the UN General Assembly and that the audience had been so fixated on him that no one blinked until he had finished. He also makes a point of offering prayers to expedite the Mahdi’s return, which is common in Shi’i gatherings but somewhat out of place in a setting like the UN, “Ta’yid-e Majara-ye Haleh-ye Nur Tavassot-e Daftar-e Ayatollah Javadi-ye Amoli” [“Office of Ayatollah Javadi-Amoli Confirms the Incident of Halo of Light”], *IranianUK*, June 8, 2009, <http://tehranlondon.com/article.php?id=38222>.

5. “Twelver” Shi’a believe that the Twelfth Imam, Muhammad al-Mahdi, was five years old when he succeeded his father in 260 AH/874 AD. He then became hidden from the world, or in occultation (Arabic *ghayba*), ruling for 70 years through a series of four deputies (*nuwwab*) in what is known as the Lesser Occultation, after which (329 AH/941 AD) began the Greater Occultation, which continues. He continues to have authority over the world and will reappear in the end times.

6. At around the same time that Khomeini was formulating and articulating his concept of *wilayat al-faqih* in Najaf in 1970, his student Morteza Motahari (d. 1979) was elucidating the concepts of unconditional love and obedience [*walaya*] and authority [*wilaya*] in Tehran, albeit exclusively from a mystical perspective free of any contemporary political relevance. See his work, *Vela-ha va Velayat-ha* [*Guardian and Guardianship*] (Qom: Entesharat-e Sadra, 1993). In contrast, Khomeini refers to the mystical notions of perfect human being [*ensan-e kamel*] and major struggle [*jihad-e akbar*] but gives them a political signification to buttress his arguments for establishing an Islamic government. For a discussion of his Islamicized version of the philosopher-king, see Beatrice Zedler, “The Ayatollah Khomeini and his Concept of an Islamic Republic,” *International Philosophical Quarterly*, Vol. 21 (1981), pp. 83–98.

is considered an extension of the authority enjoyed by the divine guides (also known as “the infallible Imams”). Khomeini advocated an Islamic state led by a qualified jurisconsult who would ensure that Islamic rulings are adhered to and implemented within the broad outlines and general principles of shari‘a. Thus, his scope of authority was at least circumscribed by the fallible human interpretation of the nebulous concept of shari‘a.⁷

Toward the end of his life, however, Khomeini stretched this concept to its farthest limit and expanded the scope of the jurisconsult’s authority⁸ by proclaiming in January 1988 that this person is not confined to shari‘a if it conflicts with the society’s general welfare and best interests.⁹ Just what constitutes this “general welfare” and “imperative necessity,” as well as how they are measured, remained undefined and vague. Moreover, the customary checks and balances over this person’s expansive powers are conspicuously absent. With this proclamation, Khomeini elevated the state’s preservation to a primary injunction [*al-ahkam al-awwaliyya*] and downgraded rituals (e.g., the obligatory prayers and fasting) to secondary injunctions [*al-ahkam al-thanawiyya*]. As a result, all governmental ordinances [*ahkam al-hukuma*] became religiously binding [*wajib*] and their non-performance constituted a sin. In his own words: “I should state that the government, which is part of the absolute deputyship of the Prophet, is one of the primary injunctions of Islam and has priority over all other secondary injunctions, even prayers, fasting and *hajj*.”¹⁰ However, he underlined that this should in no way be misconstrued to mean that the jurists enjoy a rank and prestige similar to those of the infallible Imams:

When we say that after the Occultation, the just *faqih* (jurist) has the same authority that the Most Noble Messenger and the Imams had, do not imagine that the status of the *faqih* is identical to that of the Imams and the Prophet. For here we are not speaking of status, but rather of function. By “authority” we mean government, the administration of the country, and the implementation of the sacred laws of the *shari‘a*.¹¹

The spiritual status of the Imam is the universal divine viceregency that is sometimes mentioned by the Imams (peace be upon them). It is a viceregency pertaining to the whole of creation, by virtue of which all the atoms in the universe humble themselves before the holder of authority. It is one of the essential beliefs of our Shi‘i school that no one can attain the spiritual status of the Imams, not even the cherubim or the prophets.¹²

7. “Islamic government is not a despotic regime. Nor is it a constitutional monarchy. Nor is it a *republic* where people have [the] discretion to choose whomever they want. Islamic government is the government of laws.” Quoted from Abbas Milani, “The Evolution of the Iranian Presidency: From Bani Sadr to Rafsanjani,” *British Journal of the Middle Eastern Studies*, Vol. 20, No. 1 (1993), p. 86.

8. Until the late 1950s, Khomeini had only called for the clergy to have a supervisory rule [*nezarat*] and for the shah to abide by Islam’s dictates. At this time, he did not advocate overthrowing the monarchy.

9. Chibli Mallat, *The Renewal of Islamic Law* (Cambridge: Cambridge University Press, 1993), p. 92.

10. Chibli Mallat, *The Renewal of Islamic Law*, p. 92.

11. Ruhollah Khomeini, *Islam and Revolution: Writings and Declarations of Imam Khomeini*, trans. Hamid Algar (Berkeley: Mizan Press, 1981), p. 62.

12. Khomeini, *Islam and Revolution*, p. 64. Here “prophets” refers to those who were not part the distinguished (*ulu al-‘azm*) prophets, namely, Noah, Abraham, Moses, Jesus, and Muhammad.

Even with this proviso, Khomeini's concept of the jurisconsult's absolute authority and mandate was a novel and radically different reading of the classical Shi'i doctrine and one that has a limited following among eminent senior Shi'i jurists.¹³ His tendency to overemphasize the political dimension of the divine guides' function and attribution of political connotations to every aspect of Shi'ism reached its climax when he equated divine politics [*siyasat-e khoda'i*]¹⁴ and religion [*din*] as synonymous¹⁵ or when he asserted that "the preservation of the Islamic Republic is a divine duty which is above all other duties. It is even more important than preserving the Imam of the Age [*emam-e 'asr*]."¹⁶ His interpretation constitutes "a true revolution in Shi'ism ... [and] has brought about an ideological revolution in Shi'ism,"¹⁷ according to Said Arjomand. The justification for these claims originates in the doctrine of the Imamate and the transmission of the Twelfth Imam's religious and political authority vis-à-vis the jurists during his Greater Occultation.

13. See Hamid Mavani, "The Basis of Leadership: Khumayni's Claims and the Classical Tradition" (master's thesis, McGill, 1992) and "Analysis of Khomeini's Proofs for *al-Wilaya al-Mutlaqa* (Comprehensive Authority) of the Jurist," in Linda S. Walbridge, ed., *The Most Learned of the Shi'a: The Institution of the Marja' al-Taqlid* (New York: Oxford University Press, 2001), pp. 183–210.

14. Ayatollah Hasan Modarres (d. 1937), an advocate of the Iranian Constitutional Movement and a remarkably popular and influential member of Parliament who was banned by the shah from participating in political events, is reported to have said: "Politics is essentially our religion and our religion is essentially equivalent to our politics." Rasul Ja'farian, *Jaryan-ha va Sazman-ha-ye Mazhabi-ye Siyasi-ye Iran, 1941–1979 [Historical Incidents and Politico-Religious Organizations in Iran, 1941–1979]* (Tehran: no publisher indicated, 2006), p. 109.

15. Such statements of political activism are striking and strange coming from Khomeini, whose background and emergence to prominence is conjoined with his penchant for gnosis and philosophy. His students relate that he made a conscious decision to stop teaching classes on these subjects for almost ten years so that he would not be targeted by the seminary [*howze*] or discredited for his disposition toward them and for not focusing upon juridical subjects. This would have downgraded his stature and, consequently, reduced his chances to attain the station of highest ranking authority to be followed by the laity [*marja' al-taqlid*]. His works on mysticism were published only posthumously so as not to tarnish his reputation as, first and foremost, a jurist. As an aside, for a discussion of the hostility and difficulties directed toward 'Allameh Mohammad-Hoseyn Tabataba'i, especially by Ayatollah Hoseyn Borujerdi, for teaching philosophy in Qom, see Hamid Dabashi, *The Theology of Discontent: The Ideological Foundation of the Islamic Revolution in Iran* (New York: New York University Press, 1993), pp. 281–284. Contrast the action program laid out by Khomeini in his lecture series on Islamic government in Najaf in 1970 with the bewildering assessment by William Sullivan, United States Ambassador to Iran during the shah's reign: "Khomeini would be likely to return to Iran as a consequence of a religious-military accommodation and ... would play a 'Gandhi-like' role." Quoted in Zbigniew Brzezinski, *Power and Principle: Memoirs of a National Security Adviser, 1977–1981* (New York: Farrar, Straus & Giroux, 1983), p. 368.

16. Ruhollah Khomeini, *Sahife-ye Nur [The Luminous Scroll]* (Tehran: Sazman-e Madarek-e Farhangi-ye Enqelab-e Eslami, 1990), Vol. 15, p. 364. A speech delivered by Khomeini on November 16, 1981, to commemorate the demise of 'Allameh Tabataba'i. Quoted in Farhang Rajaei, *Islamic Values and World View: Khomeyni on Man, the State, and International Politics* (Lanham, MD: University Press of America, 1983), p. 70.

17. Said Amir Arjomand, "Ideological Revolution in Shi'ism," in Said Amir Arjomand, ed., *Authority and Political Culture in Shi'ism* (Albany, NY: SUNY, 1988), pp. 191–192.

DOCTRINE OF IMAMATE

In its classical form, the Shi'i theory of religious and political authority, also known as "the doctrine of Imamate," envisions the transferral of the Prophet's charisma to the infallible divine guides starting with his cousin and son-in-law, 'Ali b. Abi Talib,¹⁸ and concluding with the Twelfth Imam, the Mahdi, whose return before the end of times would usher in an era of equity and justice. This doctrine, the pivot around which all other fundamental Shi'i doctrinal issues revolve, thus occupies a central place in the school's belief system.¹⁹ As such, Shi'i political thought cannot be understood without a full comprehension of this crucial doctrine.

While there is general consensus on the necessity of a leader [Imam]²⁰ to provide guidance after the Prophet's demise, there is no consensus on his qualifications, the scope and nature of his authority, and the mode of his selection. The Shi'a insist that the Imamate is one of Islam's fundamentals and that, as such, it is just as important as prophethood [*nubuwwa*] and a necessary continuation of it. Their exegetes and traditionalists argue that the Imams' station is higher than that of all prophets, except for the distinguished ones [*ulu al-'azm*]: Noah, Abraham, Moses, Jesus, and Muhammad. This is based on Q. 2:124, in which Abraham is given the title of *imam* after fulfilling the divine directive. In their exposition of the creed, Shi'i scholars divide the principles of religion [*usul al-din*] into five tenets and place the Imamate at the center; the others are divine unity [*tawhid*], divine justice [*'adl*], prophethood, and the Day of Resurrection [*yawm al-qiyama*]. In contrast, the Sunnis do not consider the Imamate to be a principle [*asl*].²¹

The Imam's unique position with respect to his cumulative, inherited knowledge, as well as his role as the infallible, inerrant guide and leader, all imply that he is the ultimate authority when it comes to expounding religious law, doctrine, and practice, as well as spiritual mentorship. His authority is viewed as an extension of Muhammad's prophetic authority in the sense that he is the living embodiment of the Qur'an, in addition to also being its interpreter and its executor. The only difference is that he does not receive revelation. The Imam is endowed with both religious and political authority over matters of religion [*din*] and of the temporal world [*dunya*], yet his comprehensive religious leadership is not

18. Only the first Shi'i Imam, 'Ali, held the office of the caliph. His collection of sermons, letters, and proverbs in a work titled *Nahj al-Balagha* [*Peak of Eloquence*] contains instructions to establish an ideal and just governance, especially in an epistle that he composed for his disciple, Malik al-Ashtar, before posting him as his governor to Egypt.

19. Although this doctrine is of crucial importance in Shi'ism, its significance is also recognized in Sunni works. For instance, Ibn Hanbal relates: "He who dies without an Imam shall die in ignorance." Ahmad b. Muhammad b. Hanbal, *al-Musnad*, ed. A. M. Shakir (Cairo: 1949), Vol. 4, p. 96. The title of supreme leadership, *al-imama al-kubra'*/*uzma*, was bestowed on a person who was at the helm of the entire Muslim community [*umma*]. See Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2004), p. 17.

20. On the various definitions and significance of "imam" in Sunni Islam and the ancient schools of Islamic law, see Norman Calder, "The Structure of Authority in Imami Shi'i Jurisprudence," (PhD dissertation, SOAS, 1980), pp. 1–23.

21. For a discussion on the progressive shift and modification in the conception of the imamate in Sunni Islam from the time of Shafi'i to Baqillani, see Calder, "The Structure of Authority in Imami Shi'i Jurisprudence," pp. 34–40. The imam's duties were confined to the executive domain, and the Muslim community [*umma*] was promoted as Islam's custodian, guarantor, and exponent.

contingent upon his being accepted as the community's ruler. As such, his spiritual authority is therefore independent of his political office, which means that he is entitled to demand absolute obedience even in the absence of holding political authority. This distinction is important to keep in mind so as not to reduce him to being no more than the community's leader, a person whose mandate is primarily political (establishing a just and an ethical order), or to view his Imamate as dependent upon being able to actualize this political vision.

The locus of authority undeniably resides in the Prophet and, by extension, the twelve infallible Imams. In terms of religious authority and leadership, the messianic Imam's prolonged concealment and inaccessibility resulted in a vacuum that was gradually filled by the 'ulama' [religious scholars] who, basing themselves on rational and traditional evidence, claimed to be his indirect deputies in carrying out some of the Imam's responsibilities. Their initial apolitical passivity, lacking a person who is inerrant and immune from sin and error [*ma'sum*], was followed by an attitude of questioning the monarchy's legitimacy and subsequent attempts to reduce the inevitable illegitimacy resulting from occupying the seat of power that exclusively belongs to the inerrant Imam, by constraining the ruler's power through a constitution in 1906. This process eventually culminated in the full-fledged authority of the jurisconsult, as expounded upon by Khomeini.²²

In general, the 'ulama' believe that certain aspects of the messianic Imam's authority and claim of obedience have been bestowed upon them, since they function as his general deputies [*novvab-e 'amm*] during his occultation due to their possession of knowledge and piety.²³ They disagree, however, over the scope and nature of this authority. The jurists' arrogation of certain functions, such as issuing legal opinions and adjudicating disagreements in matters of *hisbiyya* (e.g., issuing legal opinions, propagating religious rulings, establishing the Friday and congregational prayers, implementing penal provisions, supervising endowments, discretionary mandate over children, orphans, and people of unsound mind, and collecting religious taxes) under the rubric of *qada'* [judgeship], are not in dispute. Even those jurists who dismiss the absolute authority of the jurisconsult [*al-wilaya al-mutlaqa li-l-faqih*] as outlandish and lacking in evidence admit that the 'ulama are entrusted with some of the Imam's duties during his absence.

Shaykh Murtada Ansari (d. 1864), the most eminent Shi'i jurist of the 19th century and a student of Mullah Ahmad Naraqi (d. 1829) who was considered the "seal of the *mujtahids* [jurists]," argued:

As for the *wilaya* [authority] in the first sense, that is the view that the (jurist) has discretionary authority (to manage the affairs of the Muslims), it is not proved in

22. See 'Abdulaziz Sachedina, *The Just Ruler (al-sultan al-'adil) in Shi'ite Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence* (New York: Oxford University Press, 1988). Another work on this issue is Liyakatali Takim's *The Heirs of the Prophet: Charisma and Religious Authority in Islam* (Albany, NY: SUNY, 2006). For a discussion between medieval-era Sunni and Shi'i polemicists on legitimate leadership and its theological underpinnings, see Asma Afsaruddin, *Excellence and Precedence: Medieval Islamic Discourse on Legitimate Leadership* (Leiden, Netherlands: Brill, 2002). On the methodological devices in *usul al-fiqh* used by Khomeini to advance his theory of absolute clerical authority, see Hamid Enayat's "Iran: Khomeini's Concept of the 'Guardianship of the Jurisconsult,'" in James P. Piscatori, ed., *Islam in the Political Process* (Cambridge: Cambridge University Press, 1983), pp. 160–180 and Dabashi, *The Theology of Discontent*, pp. 454–455.

23. Norman Calder, "Accommodation and Revolution in Imami Shi'i Jurisprudence: Khomeini and the Classical Tradition," *Middle Eastern Studies*, Vol. 18, No. 1 (Jan. 1982), p. 4.

general, except that some people think so because of some traditions ... But, if one looks at the context of these traditions and at the words preceding and following, then the sense of justice will make him certain that these traditions simply explain the duties of the *fuqaha* (jurists) in respect to religious ordinances (*al-ahkam al-shar'yya*); and not their being like the Prophet and the Imams, may the blessings of God be upon them, in the sense that they possess authority over the people in their properties... In brief, one will have to accomplish an impossible task before he can prove that it is obligatory to obey a *faqih* (jurist) like an Imam in everything except that which is excluded from it by other proofs.²⁴

According to him even the religious title of *khums* [20% of one's annual savings], which jurists assert must be channeled through them to be considered religiously valid, lacks proof: "If the jurist asks a follower [*mukallaf*] to pay his religious taxes [*zakat* and *khums*], there is no proof for his obligation to pay it to him."²⁵

He delineated three functions advanced by jurists as having been invested in them during the Greater Occultation: (1) Issuing legal opinions and adjudicating religious issues for the laity's benefit (consensus has been reached); (2) Administering justice based on extrapolations from hadiths such as the *maqbulah* (accepted tradition) of 'Umar b. Hanzala and *mashhura* [well-known tradition] of Abu Khadija (consensus has been reached); and (3) A jurist's discretionary authority [*wilayat al-tasarruf*], which includes the political domain (consensus has not been reached).²⁶

The Usulis' triumph over the Akhbaris regarding the use of *ijtihad* [independent judgment] to derive new legal rulings,²⁷ as well as the methodological advances made by the former, enabled Mullah Ahmad Naraqi to systematically explore the nature and scope of authority vested in the jurisconsult during this period.²⁸ Up until then, this issue had been dealt with sporadically in different chapters of jurisprudence, such as judgeship [*qada'*], religious dues [*khums*], and jihad. Employing rational arguments, he advanced religious ordinances and traditions in favor of the jurisconsult's expansive *wilaya* [authority] (but only at the theoretical level) to validate the ulama's discretionary authority (which was to remain within the confines of normative law [the shari'a]) in a form of juristic speculation. At the same time, he provided legal tools to legitimate the rule of a government headed by a non-jurisconsult and formally acknowledged and sanctioned Fath 'Ali Shah, the ruler of his time, to whom he also dedicated some of his works.²⁹ Thus, it is clear that his intention was not to actualize or implement his theory and, most likely, he was motivated to expand

24. Murtada al-Ansari, *Kitab al-Makasib* [*The Book of Earnings*], Muhammad Kalantar, ed. (Beirut: Mu'assasat al-Nur li-l-Matbu'at, 1990), Vol. 9, pp. 325–330.

25. Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam: From the Office of Mufti to the Institution of Marja'* (Kuala Lumpur: ISTAC, 1996), p. 158.

26. Ansari, *Kitab al-Makasib*, Vol. 3, pp. 545–546.

27. The Akhbari/Usuli controversy in Shi'i Islam was over the use of *ijtihad* or independent legal judgment. Akhbaris sought to reject legal decisions reached through *ijtihad*, relying only on the Qur'an and the hadiths of the Prophet and the Imams, while Usulis accepted *ijtihad* by recognized mujtahids and the following of *maraji'* (sing. *marja'*) *al-taqlid* [sources of emulation], senior scholars of established reputation. By the end of the 18th century the Usuli school had triumphed in Iran. A few Akhbaris survive in southern Iraq, Bahrain, and elsewhere.

28. Rula Jurdi Abisaab, *Converting Persia: Religion and Power in the Safavid Empire* (New York: I.B. Tauris, 2004), pp. 105–112.

29. Moussavi, *Religious Authority in Shi'ite Islam*, p. 155.

the scope of power and authority of the jurists in response to the challenges posed to the jurists by the Sufis who were claiming the charismatic authority of the Imam.

The nature and scope of the jurists' assumption of the Imam's authority has varied throughout Shi'i intellectual history: rejection of temporal power; partial assumption of certain limited aspects of the Imam's functions; and culminating with Khomeini's version of Islamic polity in which the jurisconsult is delegated with the same scope of power and authority as the infallible Imam. This expansive and comprehensive power delegated to the jurisconsult along with a transition from jurists collectively exercising general deputyship of the Imam to concentrating this function in the person of a single jurisconsult or a collegial body of jurists represents a radical break from tradition.

THE EVOLUTION OF KHOMEINI'S THOUGHT ON WILAYAT AL-FAQIH

Over time, Khomeini's concept of *wilayat al-faqih* expanded the jurists' scope and authority. He began by calling upon religious scholars to supervise the monarchy's legislative and executive branches to ensure that all laws conformed with shari'a. In other words, the form of government was of secondary importance so long as the law of Islam was enforced. He wrote in 1943: "We do not claim that the government should be in the hands of the jurist, but that it should act according to the divine law in which lies the welfare of the nation and people. This is not attainable without the supervision of the religious scholars — a fact that was confirmed also by the proponents of constitutionalism."³⁰ In 1953 he modified this position by adducing proofs and evidence that their scope of authority included governance. This shift, which occurred while he was in Qom and Najaf, can be seen in his *al-Rasa'il* [*The Epistles*], *Tahrir al-Wasila* [*Commentary on the "Vehicle to Salvation"*], and *Kitab al-Bay'* [*The Book of Business Transactions*]. Between 1977 and 1980 he reverted to his preference for the jurists to have a supervisory role and placed greater emphasis on an "Islamic republic."

While in Paris in 1978, Khomeini explicitly stated that rather than seeking or accepting any official government position, he would confine himself to the supervisory role of a guide in order to pursue the society's best interest. Moreover, he would interject himself into situations only when he saw treachery and deceit that would harm the public welfare.³¹ Yet this stance was hardly credible, given his vociferous support for *wilayat al-faqih* ever since he first laid out its legal justification in his four-volume treatise *Kitab al-Bay'* in the early 1960s and while in Najaf: "It is our duty to preserve Islam. This duty is one of the most important obligations incumbent upon us; it is more necessary even than prayer and fasting."³² However, Ghamari-Tabrizi argues that Khomeini was a pragmatist and therefore reluctant to force the inclusion of *wilayat al-faqih* because he did not consider the public mature enough to accept it and the clergy capable and willing to govern.³³

30. Ruhollah Khomeini, *Kashf al-Asrar* [*Uncovering of Secrets*] (Tehran: no publisher or date indicated), pp. 185, 222. Vanessa Martin, "Religion and State in Khomeini's *Kashf al-Asrar*," *BSOAS*, Vol. 56, No. 1 (1993), pp. 34–45.

31. Mohsen Kadivar, *Hokumat-e Velayi* [*Jurisconsult's Guardianship State*] (Tehran: Ney Publishing House, 1998), pp. 141–146.

32. Khomeini, *Islam and Revolution*, p. 75.

33. Behrooz Ghamari-Tabrizi, *Islam and Dissent in Postrevolutionary Iran: Abdolkarim Soroush, Religious Politics and Democratic Reform* (New York: I.B. Tauris, 2008), pp. 41–43.

The fourth and final phase began in early 1988 and lasted until his death in June 1989. During this period, he called for a full-fledged and comprehensive authority that would permit the jurisconsult to override primary injunctions and suspend or void acts of worship or articles of the Constitution if he deemed such actions to be in the interest of the people and the state. It must be noted, however, that throughout all phases he consistently argued that the majority's approval and endorsement was critical to the governmental institution's legitimacy.³⁴ This view differs markedly from that of the fiery Ayatollah Mohammad-Taqi Mesbah Yazdi, the director of Imam Khomeini Education and Research Institute in Qom and member of the Assembly of Experts [*Majles-e Khobregan*], which is tasked by the constitution with choosing the jurisconsult.³⁵

Khomeini's remarks during a 1978 interview in Paris, conducted shortly before his return to Iran, should not be taken at face value, for he deftly avoided detailing his government's structure, his future role and that of the religious scholars, or his plans to turn Iran into a theocracy.³⁶ His motivation may have been to placate and appease those worried about the clergy's role in the new government and those who might feel alienated or even antagonistic to his proposed state model. To counter these misgivings, he added that he did not want the clergy to involve themselves in politics because their primary function, that of guiding the country, was a far nobler and more praiseworthy one.³⁷ About one year after his return, Hamid Algar asked him during an interview about the religious scholars' role in the new political structure. He replied:

The religious scholars do not wish to become Prime Minister or President, and indeed it is not in their interest to do so. They do, however, have a role to play ... the role they have is one of supervision, not of assuming executive positions without the proper expertise ... the expertise of the religious scholars lies in the area of Islamic law ...³⁸

Later on, however, he claimed that he could find very few non-clerical people capable of governing the country in a way that would preserve Iran's sovereignty and integrity. Therefore, he decided to temporarily [*mo'vaqqat*] allow the clergy to enter the political arena, asserting that they would abandon it and confine their role to supervision and guidance as soon as capable, righteous, and trustworthy non-clerical individuals emerged who could administer the country in the manner that God desires.³⁹ Khomeini was overly optimistic that the 'ulama', due to their strong grounding in knowledge, piety [*taqwa*], spirituality, and close contact with the public, would somehow be insulated from abusing and exploiting their new-found power and authority. Perhaps this optimism was the outcome of his training in the mystical sciences (*'irfan*). These ambiguous and conflicting statements ought to be measured against his 1970 Najaf lectures on Islamic government, in which he categorically subscribed to the jurisconsult's comprehensive authority to use his executive powers to implement the laws of Islam instead of being confined to a limited supervisory role.

34. Kadivar, *Hokumat-e Velayi*, pp. 150–203, especially pp. 172–173.

35. Sussan Siavoshi, "Ayatollah Mesbah Yazdi: Politics, Knowledge, and the Good Life," *The Muslim World*, Vol. 100 (January 2010), pp. 124–144.

36. Khomeini, *Sahife-ye Nur*, Vol. 4, p. 206; and Vol. 13, pp. 107, 56, 75, 88, and 96.

37. Khomeini, *Sahife-ye Nur*, Vol. 22, p. 128.

38. Kadivar, *Hokumat-e Velayi*, pp. 342–343.

39. Khomeini, *Sahife-ye Nur*, Vol. 16, pp. 211–212.

Ayatollah Morteza Motahhari (d. 1979), Khomeini's prominent and highly revered student who was assassinated shortly after the establishment of the Islamic Republic, unambiguously stated that *wilayat al-faqih* does not entail a jurisconsult ruling the country or the clerics occupying official government portfolios. Instead, he argued that a jurisconsult or a collegial committee of jurists would have a supervisory role and guard (*moraqebat*) the people against any harm or loss. Moreover, the public's approval for such a government is necessary, and the supreme jurist has to be elected by the people. Shi'i jurists had maintained their financial independence from state patronage and preserved their autonomy throughout history by declining all state appointments and financial assistance. In addition, they did not become embroiled in the day-to-day affairs of running the country, unlike many Sunni jurists who became government functionaries and thus lost their credibility among the people.

Having learned from this history, Motahhari asserted that the clerics had no intention of becoming intimately intertwined with the workings of government because doing so would cause them to forfeit their role as neutral arbiters in any dispute between the public and the government. In short, they should not accept official governmental positions because their primary function is to guide and supervise.⁴⁰

DISSENTING VIEWS ON WILAYAT AL-FAQIH

Among Khomeini's contemporaries, the most eminent and revered jurist was Ayatollah Abu al-Qasim al-Khu'i (d. 1992) of Najaf, the highest ranking authority to be followed by the laity [*marja' al-taqlid*] for the majority of the world's Shi'a. After having examined all of the proofs and evidence normally advanced in favor of general *wilaya* [the jurisconsult's authority over the people], he proclaimed that none of them, either individually or collectively, convincingly proved that it extends beyond the narrow sphere of *hisbiyya*.⁴¹ While the jurist does have a limited right of disposal and administration on the basis of necessity and exigency to intervene in that particular sphere, this exigency must be invoked only to preserve the individual welfare. In other words, it cannot be extended to the country's social or public welfare [*masalih ijtima'*]. In the absence of a qualified jurisconsult, this obligation is transferred to just Muslims [*wilayat 'udul al-mu'minin*]:

During the occultation (of the Imam) the *wilaya* (authority) of the jurists cannot be established by reference to any proof. The *wilaya* is exclusive to the Prophet and the Imams. That which is established in favor of the jurists from the hadith reports is in two fields: in adjudication or judgeship (*qadawa*) and issuing of legal opinions (*fatawa*) ... accordingly, that which is established for the jurist is permission of disposal and administration but not general *wilaya*.⁴²

40. Kadivar, *Hokumat-e Velayi*, pp. 147–148.

41. Issuing legal opinions, propagating religious rulings, establishing the Friday and congregational prayers, implementing penal provisions, supervising endowments, discretionary mandate over children, orphans, and people of unsound mind, and collecting religious taxes.

42. Abu al-Qasim al-Khu'i, *al-Tanqih fi Sharh al-'Urwa al-Wuthqa* [Reexamination of "Commentary on al-'Urwa al-Wuthqa" {The Handle of Trust}], Mirza 'Ali Gharawi Tabrizi, ed., (Qom: Bostan, 1990), p. 424. Ayatollahs Mohammad-Kazem Khorasani (d. 1911), Muhsin al-Hakim (d. 1970), and Ahmad Khwansari (d. 1984) also held this opinion.

Ayatollah 'Ali al-Husayni al-Sistani, a student of Khu'i and one of the highest religious authorities [*maraji'*] with a substantial following among the Shi'a, espouses a similar view. In August 2010, however, he added a conditional clause: If a *faqih* [jurist] wants to possess *wilaya* [authority] in the state's administration, he must secure the people's general approval [*maqbuliyya 'amma*].⁴³ Some have interpreted this as an objection to Khamenei's fatwa, issued around the same time, that accorded to the qualified jurisconsult the same scope of authority as that enjoyed by the Prophet and the Imams. Although this is the view of Khamenei's mentor (viz., Khomeini), the extent of the governing jurisconsult's power and authority was left in abeyance and given a low profile after his death partly because his successor, Khamenei, was a junior cleric who lacked his predecessor's religious standing and charismatic status. As a result, Khamenei was not ranked among the eminent sources of emulation [*maraji' al-taqlid*]. Moreover, some figures have scrutinized and even challenged his credentials as a qualified jurist, especially Ayatollahs Hoseyn-'Ali Montazeri and Yusef 'Ali Sane'i. When this fatwa was placed on Khamenei's official website, the ensuing uproar was so intense that it had to be removed.

This is an instance of an inevitable tension between the jurisconsult [*wali al-faqih*] and the highest religious authority [*marja' al-taqlid*] if both positions are held by different people. In the contemporary context, Khamenei is advanced as the jurisconsult whereas the office of the *marja' al-taqlid* resides in the person of Sistani in Najaf. The majority of the Shi'a refer to and follow [*taqlid*] Sistani for religious guidance and prescriptions in substantive law and remit their religious dues directly to him or to his agents [*wukala'*].

Other senior government-affiliated jurists have had to enter the fray to defend Khamenei. For instance, Ayatollahs Naser Makarem Shirazi and 'Abdollah Javadi-Amoli have said in the past that everyone, even the jurists [*mujtahids*] and highest religious authorities [*maraji' al-taqlid*] must obey the jurisconsult's decrees [*hukm*] because this matter does not require rational proofs for its validity.⁴⁴ Mehdi Karroubi, a 2009 presidential candidate and an opposition Green Movement leader, sarcastically remarked that the amount of discretionary authority bestowed upon this person has expanded to such a degree that it is unlikely that even the Prophet or the Imams had ever enjoyed so much authority: "Why has the authority of the *Vali-ye Faqih* [jurisconsult] been so greatly extended? I doubt that so much authority and power were given to the Prophets themselves, or the infallible [Shi'i] Imams. I even doubt that God considers himself to have the right to deal with his servants in the same way [that the Supreme Leader does]!"⁴⁵

Sistani's juridical opinion on *wilayat al-faqih* is diametrically opposed to the views of many pro-government jurists in Iran, especially those of Mesbah Yazdi. This particular ayatollah is infamous for his fiery and inflammatory speeches, statements, and rhetoric, all of which have created a culture of hate and intolerance. President Ahmadinejad

43. 'Ali al-Husayni al-Sistani, "*al-Istifta'at: Wilayat al-Faqih (Majmu' al-Istifta'at: 2)*" ["Legal queries: Governance of the Jurisconsult (from Legal Queries Collection, Vol. 2)"], *The Official Website of Grand Ayatollah al-Uzma Seyyid Ali al-Sistani*, <http://www.sistani.org/index.php?p=297396&id=755>.

44. "Javadi-ye Amoli: *Naqz-e Hokm-e Vali-ye-Faqih Hatta bar Faqihan va Mojtahedan ham Haram Ast*" [Javadi-Amoli: It is Prohibited Even for the Jurists to Reject the Legal Ruling of the Jurisconsult], *Gooya News*, May 4, 2011, <http://news.gooya.com/politics/archives/2011/05/121439.php>.

45. "Mahdi Karoubi: Complete Statement for the Anniversary of the Birth of the Green Movement," *Khordaad88: June 09; The Election, The Aftermath, The Green Movement*, June 20, 2010, <http://khordaad88.com/?p=1696>.

held him in high esteem and appeared to be mentored by him until April 2011, at which time Mesbah Yazdi distanced himself and stressed that his prior support and endorsement was not to be construed as being of a permanent nature, regardless of the president's conduct and behavior, especially in light of his challenging Khamenei's decrees. According to Mesbah Yazdi, this abnormal behavior on the part of Ahmadinejad has to be attributed to his being "bewitched" by his top advisor, Esfandiyar Rahim-Masha'i.⁴⁶

In the post-election debate on whether the public could hold the jurisconsult accountable, Mesbah Yazdi has vociferously championed Khomeini's proposed model of government and minimized the public's role in validating or holding the jurisconsult accountable: "What entitlements do people fancy they possess to be able to give the right [to govern] to someone else?"⁴⁷ According to him, this person, whom the Assembly of Experts discovers by the grace of God and appoints as the supreme jurisconsult, is to be viewed as the infallible Imam's deputy. He is presented to the people only for the purpose of information, not to obtain their consent or endorsement. If any infallible Imam sought the public's endorsement to become caliph, this was done merely to empower him to carry out the reforms with the public's assistance. In no way can it be interpreted as meaning that the validity of the Imam's socio-political post depends upon public approval.⁴⁸

In addition, Mesbah Yazdi declares that the jurisconsult obtains his legitimacy from God by virtue of being the messianic Imam's indirect deputy and, as a consequence, the validity of the presidential election depends upon the jurisconsult's approval and endorsement to legitimize his election and authority. If this were not the case, his exercise of power would be considered usurped and unlawful. Mesbah Yazdi further maintains that obeying the president is equivalent to obeying God, because once the jurisconsult accepts the president, the latter receives the legitimacy and benefits from the light of the former's sacred authority. Accordingly, it then becomes religiously mandatory upon everyone to obey the president just as it is mandatory to offer the five ritual prayers.⁴⁹

In May 2010, Ayatollah 'Ali Sa'idi, Khamenei's representative among the Revolutionary Guards, asserted that one way of deducing the infallible Imam's consent and pleasure is to seek out the jurisconsult's (currently Khamenei) opinion. In effect, this position suggests that the latter is almost infallible and that the Imam has approved his actions because his edict is equivalent to that of the Imam himself [*hokm-e rahbari hokm-e emam-e zaman ast*].⁵⁰ Contravening or opposing the jurisconsult's decree is

46. Thomas Erdbrink, "Ayatollah: Iran's president 'bewitched' by senior aide," *The Washington Post*, May 15, 2011, http://articles.washingtonpost.com/2011-05-15/world/35232360_1_esfandiyar-rahim-mashaie-mohammad-reza-bahonar-influential-cleric.

47. "Mesbah Yazdi..Mardom Hich Kareh-and" [Mesbah Yazdi: People Have No Inherent Rights"], *YouTube*, August 8, 2010, <http://www.youtube.com/watch?v=KO9G5bdo2G4>.

48. Mohammad-Taqi Mesbah Yazdi, *Hocuq va Siyasat dar Qur'an* [Rights and Politics in the Qur'an], ed. M. Shahrabi (Qom: Entesharat-e Mo'assese-ye Amuzashi va Pazhuhesi-ye Emam Khomeini, 1999), p. 317.

49. "Ayatollah Mesbah: Eta'at az Ra'is Jomhur, Eta'at az Khodast" ["Ayatollah Mesbah: Obedience to the President is Obedience to God"], *FardaNews.com*, August 12, 2009, <http://www.fardanews.com/fa/pages/?cid=88589>.

50. "Namayandeh-ye Ayatollah Khameneh-i dar Sepah: Hokm-e Rahbari Hokm-e Emam-e Zaman Ast" ["Ayatollah Khamenei's Representative in the Revolutionary Guard: Ruling of the Leader is Equivalent to the Ruling of the Imam of the Age"], *IranianUK*, May 3, 2010, <http://tehranlondon.com/article.php?id=49488>.

equivalent to challenging the decree of God and the Twelfth Imam.⁵¹ In August 2010, Sa'idi outlined the many internal and external challenges facing Iran and stated that it is passing through a critical phase. At times, he opined, it is difficult for the general public to distinguish truth from falsehood, since advocates of every group claim to be following the Qur'an. In such a situation, the Qur'an cannot be made the criterion for distinguishing one group from another because, as Imam 'Ali stated, it is subject to different interpretations and exegesis: "The Qur'an is a book, covered, between two flaps, and it does not speak. It should therefore necessarily have an interpreter. Human beings alone can be such interpreters."⁵² The only available option is to view the jurisconsult as the standard for discovering truth and reality, because in every age God sends a proof [*hujja*] to provide certainty. The reference here is, of course, to Khamenei. This is a daring appropriation of Shi'i tradition, in which the Prophet and the infallible Imams are exclusively referred to as the proofs [*hujaj*, pl. of *hujja*] of God on Earth.

Sa'idi continues that just as in the past, when some people who had initially supported Imam 'Ali and his right to the caliphate after the Prophet's death eventually abandoned and betrayed him, such individuals exist today. In particular he mentioned the killing of Talha⁵³ and Zubayr⁵⁴ by the forces of 'Ali at the Battle of the Camel in 656, thereby suggesting that those who oppose the leader can be liquidated, just as Imam 'Ali had to fight his enemies and kill some of those who were Muslim and his former allies. Khamenei also made this latter point in his June 2010 Friday sermon in Tehran to commemorate the twenty-first anniversary of Khomeini's death. He mentioned that even though Talha and Zubayr were prominent companions of the Prophet and had a distinguished record of service to Islam in the past, as soon as they opposed Imam 'Ali they forfeited the merits of their past virtuous deeds and Imam 'Ali fought them with resoluteness and determination.⁵⁵ The analogy made here is with Mehdi Karroubi and Mir Hossein Mousavi who were the two presidential candidates in 2009 with an impressive record of distinction in the past but were subsequently placed under house arrest since February 14, 2011, because of their betrayal to the revolutionary ideals and for inciting a rebellion by challenging the soundness of the 2009 election results. Likewise, Khomeini had shown no leniency to those who had betrayed the

51. "Sa'idi: *Takhallof az Farman-e Vali-ye Faqih Mokhalefat ba Farman-e Khoda va Emam-e Zaman Ast*" ["Sa'idi: Disagreement with the Proclamation of the Jurisconsult is Equivalent to Disagreement with the Proclamation of God and Imam of the Age"], *AftabNews*, April 27, 2011, <http://www.aftabnews.ir/vdcepqsi2bqio8.ala2.html>.

52. 'Ali b. Abi Talib, *Nahj al-balagha [Peak of Eloquence]*, compiled by Sharif al-Radi, trans. S.A. Reza (Rome: European Islamic Cultural Centre, 1984), Sermon 124, p. 278.

53. Talha b. 'Ubaydallah (d. 656) was one of the early converts to Islam and an eminent companion of the Prophet. He was a cousin of Abu Bakr and was singled out as one of the ten companions to whom paradise was promised. He joined 'A'isha, the Prophet's wife, and Zubayr to battle against 'Ali at the Battle of the Camel to avenge for the blood of 'Uthman, the third caliph.

54. Zubayr b. al-'Awwam (d. 656) was an eminent companion of the Prophet and his cousin who embraced Islam when he was about 15 years old. He participated with Muhammad in all the major battles. He was killed by a person on his way to Hijaz after having had a change of heart not to fight 'Ali at the Battle of the Camel.

55. "Ayatollah Khameneh-i: *Amir al-Mo'menin ba Talheh va Zobeyr ham jangid*" ["Ayatollah Khamenei: The Commander of the Faithful also Fought Against Talha and Zubayr"], *Radio Zamaaneh*, June 4, 2010, http://zamaaneh.com/news/2010/06/post_13363.html.

revolution. In fact, he had them executed although they had been quite close to him and had accompanied him on the plane to Tehran in February 1979.⁵⁶

The recent dispute between Ahmadinejad and Khamenei over the reinstatement of Intelligence Minister Heydar Moslehi represents the first instance of a government official publicly challenging the jurisconsult's decree. This has prompted zealous supporters of Khamenei, such as Ayatollah Kazem Seddiqi, to proclaim that unquestioning obedience to the jurisconsult is demanded because he has been vested with the all-encompassing divine mandate. For example, he would be within his rights to divorce a married couple without their consent. Thus, if this person were to divorce Ahmadinejad and his wife, their marriage would be over.⁵⁷ Such claims represent a radical break with the traditional Shi'i understanding of Imamate and the jurists' indirect deputyship.

WILAYAT AL-FAQIH AND MONTAZERI

Khomeini's proposed model of governance has received a disproportionate amount of attention in the post-1979 period. This sometimes obscures the fact that his theory was simply one among many others that have been advanced by Shi'i scholars. Thus, it cannot be considered the accepted or the authoritative model of governance; in reality, it represents a sharp break with tradition. Other paradigms exist, such as those presented by Ayatollahs Muhammad Baqir al-Sadr (d. 1980), Muhammad Husayn Fadlallah (d. 2010), Hoseyn-'Ali Montazeri (d. 2010), Ne'matollah Salehi Najafabadi (d. 2006), Muhammad Mahdi Shams al-Din (d. 2001), Mehdi Ha'eri Yazdi (d. 1999), Hoseyn Kazemeyni Borujerdi, Mohsen Kadivar, Mohammad Mojtahed Shabestari, Mostafa Mohaqqueq Damad, and Dr. 'Abdolkarim Soroush. All of these merit serious consideration due to their nuanced understanding of the range of opinions on this issue and for playing a pioneering role in proposing the various political paradigms that constitute an integral part of Shi'i political thought.

Among the jurists, the preeminent role of critically analyzing *wilayat al-faqih* has been undertaken by Montazeri,⁵⁸ Khomeini's designated heir. Before his radical shift from the jurisconsult's full-fledged authority to his supervisory role in politics, Montazeri had written a four-volume Arabic-language work to justify the concept's legitimacy and validity upon Qur'anic verses, hadith reports, and reason [*'aql*]; however, his interpretation was quite anomalous in Shi'i scholarship.⁵⁹ In this work, he advocated concentrating authority in the jurisconsult, who would be chosen not by the people but selected on account of his proficiency and expertise in temporal and religious matters.

56. "Khameneh-i: Gozashte-ye Mokhalefan Ahamiyyati Nadarad, Barkhi az Hamrahan-e Imam beh Khater-e Khiyanat-e beh vey E'dam Shodand" ["Khamenei: The Past of the Opponents is Not Important, Some of the Entourage of the Imam Were Executed Because They Betrayed Him"], *Ettala'at.net*, June 4, 2010, <http://ettelaat.net/10-juni/news.asp?id=47846&sort=Rahbari>.

57. "Video: Haqq-e Talaq-e Hamsar-e Ahmadi-Nezhad dar Ekhtiyar-e Ayatollah Khameneh-i" ["Video: The Right of Divorce of Ahmadinejad's Wife Rests with Ayatollah Khamenei"], *Koocheh: New Persian Voice*, May 7, 2011, <http://radiokoocheh.com/article/104707>.

58. Ironically, he supported including the concept of *wilayat al-faqih* in the constitution. Recently, he expressed his regret over the American hostage incident and now considers it an error because of its negative impact on American-Iranian relations.

59. Montazeri, *Dirasat fi Wilayat al-Faqih wa Fiqh al-Dawlat al-Islamiyya*.

At the same time he began to express his dissenting views forcefully, even though they were diametrically opposed to Khomeini's on matters dealing with state administration and the treatment of prisoners. As a result, in 1989 he was removed as Khomeini's successor, two months before the latter's death. Subsequently, he became more vocal and found his seminary classes cancelled, his assets (part of the religious dues sent to him by his followers) frozen, and his movements curtailed.

He also scathingly rebuked Khamenei in 1997, after reformist leader Ayatollah Mohammad Khatami's landslide presidential victory, for trying to monopolize power and interfering in the people's political, economic, social, and religious life. According to Montazeri, the jurisconsult has a mandate to oversee and supervise the state's activities, but cannot meddle in each and every aspect because he lacks the necessary expertise to do so. In addition, he reminded Khamenei of his junior rank in the clerical leadership and his lack of scholarly credentials, prestige, and charisma in comparison with the late Khomeini: "You [Khamenei] are not of the rank and stature of a highest religious authority [*marja'*]." ⁶⁰

More recently, he expressed sorrow and apologized for having supported the absolutist form of the guardianship of the jurisconsult. He exhibited contrition in an interview with Geneive Abdo in 2001, during which he said that "no one can claim to have access to the absolute truth, and that everyone should always strive to correct one's positions and views in the direction of the superior truth."⁶¹ In his message of September 2009, which he circulated among senior jurists, he went so far as to say that he viewed himself as partially complicit in the state-inflicted loss of lives and injuries after the presidential election, the underpinnings and foundation of which are supported by his earlier writings. The present state has degenerated into a military guardianship [*velayat-e nezami*] and can no longer claim to be based on the concept of governance of the jurisconsult [*velayat-e faqih*].⁶²

Toward the end of his life, he strove to make a case that popular participation and endorsement are integral to legitimizing the jurisconsult's mandate. One of his primary arguments is that even Imam 'Ali, traditionally viewed by the Shi'a as having been explicitly designated [*nass*] by God to assume the caliphate after the Prophet's death, adopted this mode.⁶³ However, Khomeini sought legitimacy by virtue of the jurists being the messianic Imam's general deputies and, as a result, did not regard public allegiance as a necessary component of legitimizing their position. At the same time, and paradoxically, advocates of an authoritative, theocratic government have insisted and claimed that the Islamic state is compatible with democratic principles and underpinnings. This has resulted in consistent tension and, at times, contradictions that finally erupted into a movement protesting the controversial result of the 2009 presidential election, one that has gradually transformed itself into a movement seeking to dismantle the *wilayat al-faqih* itself, which is viewed as absolutist and dictatorial.

60. Charles Kurzman, "Critics Within: Islamic Scholars' Protest against the Islamic State in Iran," *International Journal of Politics, Culture and Society*, Vol. 15, No. 2 (Winter 2001), p. 347.

61. Geneive Abdo, "Rethinking the Islamic Republic: A 'Conversation' with Ayatollah Hossein 'Ali Montazeri," *The Middle East Journal*, Vol. 55, No. 1 (Winter 2001), p. 13.

62. "Grand Ayatollah Montazeri's Letter to Marjas, Islamic Scholars and Seminaries," *Khordaad 88: June 09; The Election, the Aftermath, the Green Movement*, September 14, 2009, <http://khordaad88.com/?p=570>.

63. Wilferd Madelung, *The Succession to Muhammad: A Study of the Early Caliphate* (Cambridge: Cambridge University Press, 1997).

Salehi Najafabadi broached the notions of public participation, social contract theory, and pledging allegiance in confirming the jurisconsult in his *Velayat-e Faqih: Hokumat-e Salehan* [*Governance of the Jurisconsult: Virtuous Government*].⁶⁴ Scholars like him, along with Montazeri, have attempted to investigate and explicate how the infallible divine guides were chosen — divine decree [*nass*], public investiture, or both — to make a case that even ‘Ali sought public allegiance and that his actions were circumscribed by divine law. This clearly conflicts with the process of selecting the supreme jurisconsult in contemporary Iran and endowing him with full-fledged authority to override even the divine law. In other words, Montazeri is attempting to bring the elements of popular sovereignty and national identity into the election process of the jurisconsult.⁶⁵

OTHER PROMINENT JURISTS IN THE POST-ELECTION PHASE

The defiant Karroubi was one of the critical whistleblowers who brought to the public’s attention the egregious mistreatment, abuse, torture, and rape of some of the imprisoned protesters at the Kahrizak prison who were charged with serious crimes because of questioning the results of the 2009 presidential election.⁶⁶ He has remained steadfast in his mission, refusing to be intimidated by the numerous threats issued against him by the government, like government-supported protesters’ firing a number of bullets at his car when he was riding in it while in Qazvin in January 2010.⁶⁷ At present, he is under house arrest. In the past, he had served in various capacities, among them speaker of the parliament, a member on the Expediency Council (presently chaired by Ayatollah Hashemi Rafsanjani), and, for a while, Khamenei’s advisor.

Three other prominent jurists have been outspoken in their criticism of the state and in disclosing its tarnished and humiliating record of treating, and then trying, protesters and those imprisoned on flimsy and fabricated charges. Ayatollahs Kadi-var, Shabestari, and Sane’i have authored scholarly works on governance during the messianic Imam’s concealment.

64. Ne‘matollah Salehi Najafabadi, *Velayat-e Faqih: Hokumat-e Salehan* [*Governance of the Jurisconsult: Government of the Virtuous*] (Tehran: Rasa, 1984).

65. “Ayatollah Montazeri: Vali-ye Faqih, Bedun-e Entekhab-e Azad-e Mardom, Mashru’iyyat Nadarad” [“Ayatollah Montazeri: The Jurisconsult has No Religious Legitimacy without Free Elections”], *IranianUK*, August 31, 2009, <http://tehranlondon.com/article.php?id=41120>.

66. “Karroubi Joz’iyyat-e Digari az Jenayat-ha-ye Rokh Dadeh dar Zendan-ha ra Fash Kard” [“Karroubi Reveals Other Secrets in Detail of Torture in Prisons”], *IranianUK*, August 13, 2009, <http://tehranlondon.com/article.php?id=40478>; Masih Alinejad, “Names Intertwined: Revisiting the Horror of Iran’s Infamous Kahrizak Prison Two Years Later,” *CNN iReport*, July 24, 2011, <http://ireport.cnn.com/docs/DOC-639872>; and Saeed Kamali Dehghan, “Iranian Doctor Murdered after Examining Rape Victims, says his Son,” *The Guardian*, August 25, 2011, <http://www.guardian.co.uk/world/2011/aug/25/iran-doctor-murder-kahrizak-rapes>.

67. Protesters threw bricks, rocks and fired two bullets at his bullet-proof car in Qazvin, Nazila Fathi, “Shots Fired at Iran Opposition Leader’s Car, Son Says,” *The New York Times*, January 8, 2010, http://www.nytimes.com/2010/01/09/world/middleeast/09iran.html?_r=0; and “Farmandeh-ye Entezami-ye Ostan-e Qazvin: Beh Khowdrow-ye Karubi Tirandazi Neshod” [“Police Chief of Qazvin: No Bullets Were Fired at the Car of Karroubi”], *IranianUK*, January 9, 2010, <http://www.tehranlondon.com/article.php?id=45439>.

MOHSEN KADIVAR

Mohsen Kadivar, a reform-oriented religious intellectual active during the revolution, decided to leave the University of Tehran and pursue seminary studies in Qom's traditional environment. Quickly becoming a stellar student, he obtained his certificate in *ijtihad* [ability to deduce legal rulings from the sources] from Montazeri in the early 1990s. He provides an elaborate, penetrating, and systematic critique of *wilayat al-faqih* in his many works and speeches. He was at the forefront of challenging the absolute authority of the jurisconsult and the system of governance at a time when these tenets were treated as sacrosanct and beyond reproach. His February 1999 article, "The Basic Problem of Iran is *Velayat-e Faqih*," written during President Khatami's term in office, landed him in jail for 18 months on the charges of "propagating slander and lies against the sacred system of the Islamic Republic of Iran" and "publishing untruths and disturbing public minds."⁶⁸ According to him, "reconciliation between democracy and government based on *welayat-e faqih* is impossible."⁶⁹ Instead, he proposes a "divine-democratic sovereignty" [*mashru'iyat-e elahi-ye mardom*] system of governance.⁷⁰ His major works include *Nazariyye-ha-ye Dowlat dar Feqh-e Shi'eh* [Governance Theories in Shi'a Jurisprudence],⁷¹ *Hokumat-e Velayi* [Jurisconsult's Guardianship State],⁷² and *Haqq al-Nas: Eslām va Hoquq-e Bashār* [Rights of Humanity: Islam and Human Rights].⁷³

He has been a vocal critic of the government's brutal crackdown on those who peacefully protested the presidential election. At the time, he was serving as a guest lecturer at the University of Virginia and took advantage of his freedom to articulate his opposition to Iran's current governing system.⁷⁴ At present, he is a lecturer at Duke University and would be ill-advised to return home. He opines that Khomeini espoused four different views on this issue: i.e., Khomeini of Qom, (until the late 1950s), Khomeini of the latter part of his residence in Qom and then Turkey and Najaf (late 1950s–78), Khomeini of Paris (1978–80), and Khomeini of Tehran (1988–89).⁷⁵

68. Yasuyuki Matsunaga, "Mohsen Kadivar, an Advocate of Postrevolutionary Islam in Iran," *British Journal of Middle Eastern Studies*, Vol. 34, No. 3 (December 2007), p. 318.

69. Farzin Vahdat, "Post-revolutionary Discourses of Mohammad Mojtahed Shabestari and Mohsen Kadivar: Reconciling the Terms of Mediated Subjectivity," *Critique*, Vol. 17 (Fall 2000), p. 148.

70. Vahdat, "Post-revolutionary Discourses of Shabestari and Kadivar," p. 150.

71. Mohsen Kadivar, *Nazariyye-ha-ye Dowlat dar Feqh-e Shi'eh* [Governance Theories in Shi'a Jurisprudence] (Tehran: Ney Publishing House, 1993).

72. Kadivar, *Hokumat-e Velayi*.

73. Mohsen Kadivar, *Haqq al-Nas: Eslām va Hoquq-e Bashār* [Rights of Humanity: Islam and Human Rights] (Tehran: Kavir, 2008).

74. The conception of *wilayat al-faqih* expounded by Iran's reformist scholars is probably close to the model proposed by 'Ali al-Husayni al-Sistani, an eminent jurist and *marja' al-taqlid* [source of emulation] residing in Najaf. He was a student of Abu al-Qasim al-Khu'i and, like his mentor, he remained apolitical and circumscribed the scope of the jurisconsult's, unlike the full-fledged and boundless authority proposed by Khomeini. This conception, however, does not preclude political involvement if the jurist believes that it would be in the best interest of religion and the community or if the public deputizes [*wakala*] him to act on their behalf.

75. Kadivar, *Hokumat-e Velayi*, pp. 141–143.

YUSEF SANE'I

Sane'i was born in 1937 to a clerical family in Nikabad, Iran. Both his father and grandfather were prominent jurists; the latter was a distinguished philosopher as well. He commenced his preliminary studies in Isfahan's religious seminaries, moved to Qom in 1951 for further studies, and in 1959 became a qualified jurist or *mujtahid*.⁷⁶ A member of the circle of Khomeini's students since 1963, he continued his cordial relationship and close collaboration with Khomeini on religious and political fronts until the latter's death in 1989. Khomeini had appointed him to the six-member Council of Guardians and later elevated him to be the general prosecutor in 1982.

A progressive jurist, his methodological contributions to Shi'i legal theory⁷⁷ have resulted in substantive differences in his deduced legal rulings on many contemporary issues when compared to those of other jurists. For instance, he has ruled that freedom of religion is a universal right based upon the Qur'anic verse on "no compulsion"⁷⁸ and therefore the famous decree that the apostate [*murtadd*] must be killed is not tenable; a fetus suffering from genetic diseases can be aborted, provided that it is less than four months old; no objection to vasectomy and castration for a couple who already have children and are not planning to have any more; non-Muslims can inherit from Muslims; indemnity for bodily injury [*diya*] inflicted is identical regardless of the victim's faith and gender;⁷⁹ the mother is entitled to full custody of her children upon her husband's death, unlike the present-day legal ruling that would transfer this right to the husband's grandfather or to a male member from his family;⁸⁰ a wife can demand and obtain a divorce from her husband by giving up her marital gift [*mahr*], if staying in the relationship is a source of great hardship and anxiety for her;⁸¹ a woman's legal testimony is equal to that of a man, provided that she has the same level of expertise as he does; a woman can occupy the highest religious or political office; the wife inherits from both the moveable and immoveable properties (such as land) of her husband, unlike the present-day Shi'i jurisprudence that excludes her from any share in the latter;⁸²

76. Many of his advanced lecture series that he offers to students have been compiled into books such as the ones on divorce and penal provisions respectively: *Fiqh al-Thaqalayn fi Sharh Tahrir al-Wasila: Kitab al-Talaq [Jurisprudence of the Two Weighty Items: Commentary on the "Tahrir al-Wasila" {Vehicle of Salvation}: Book on Divorce]*, compiled by al-Sayyid Diya' al-Murtada (Tehran: Mo'assese-ye Tanzim wa Nashr-e Asar-e Emam Khomeyni, 2004); *Fiqh al-Thaqalayn fi Sharh Tahrir al-Wasila: Kitab al-Qisas [Jurisprudence of the Two Weighty Items: Commentary on the "Tahrir al-Wasila" {Vehicle of Salvation}: Book on Requitat]*, compiled by al-Sayyid Diya' al-Murtada (Tehran: Mo'assese-ye Tanzim wa Nashr-e Asar-e Emam Khomeyni, 2004).

77. Hamid Mavani, "Paradigm Shift in Twelver Shi'i Legal Theory (*usul al-fiqh*): Ayatullah Yousef Saanei," *The Muslim World*, Vol. 99 (April 2009), pp. 335–355.

78. "There is no compulsion in religion: true guidance has become distinct from error" (2:256).

79. Yusef Sane'i, *Barabari-ye diya: Zan va mard, Mosleman va Ghayr-e Mosleman [Equality in Indemnity: Woman and Man, Muslims and non-Muslims]* (Qom: Mo'assese-ye Farhangi-ye Feqh-e Saqaleyn, 2005).

80. Yusef Sane'i, *Qeymumiyat-e Madar [Guardianship of the Mother]* (Qom: Mo'assese-ye Farhangi-ye Feqh-e Saqaleyn, 2005).

81. Yusef Sane'i, *Vojub-e Talaq-e Khol' bar Mard [Obligation on Man to Grant the Petition of Divorce]* (Qom: Mo'assese-ye Farhangi-ye Feqh-e Saqaleyn, 2007).

82. Yusef Sane'i, *Ers-e Zan az Showhar [Inheritance of Wife from Husband]* (Qom: Mo'assese-ye Farhangi-ye Feqh-e Saqaleyn, 2005).

the wife does not need her husband's consent to leave the house, so long as none of his rights would be violated due to her temporary absence; and a woman can lead a mixed-gender congregational ritual prayer.⁸³

Recently, after his office was vandalized because of his criticism of the government,⁸⁴ the *Jame'eh-ye Modarresin* [Council of Religious Scholars] in Qom issued a proclamation stating that Sane'i had been demoted from *marja' al-taqlid* [source of emulation for the Shi'i public] to a simple ayatollah because he lacked the credentials of a senior jurist.⁸⁵ This is one of the rare times in Shi'i history that an institution has tried to revoke a jurist's rank, for it is normally attained gradually and informally by popular acclamation based upon the person's scholarship, command over the subjects he teaches, the caliber of the students he graduates, and his acceptance by other senior jurists of his stature. Eminent jurists such as Ayatollahs Hoseyn Vahid Khorasani, 'Abd-ol-Karim Musavi Ardebili, Hoseyn Nuri Hamadani, and many others have rejected this directive. Naser Makarem Shirazi, a pro-government figure, provided the following analogy to demonstrate that disagreeing with and criticizing the government does not render one unsuitable to be a *marja'*. A case in point: Khomeini dismissed Montazeri from his post of "heir apparent" due to political disagreements; however, this in no way impacted his rank, and he continued to have followers [*muqallidun*] and issue legal rulings [*fatawa*]. Only Ayatollah Javadi-Amoli, an ardent and zealous government supporter, tried to rationalize and justify the declaration, stating that the council's ruling has to be made public and that if the people find it reliable and trustworthy, then they can act upon it.⁸⁶

MOHAMMAD MOJTAHED SHABESTARI

Shabestari was trained in the Shi'i seminary of Qom but also received extensive training in German philosophy and Protestant theology during his 1970–79 tenure as the director of the Shi'i Center at Hamburg, Germany. His writings focus on modern hermeneutics and its role in understanding Islam and its moral-legal-ethical norms and

83. Institute of Art and Culture, *Neghahi Kowtah be Zendegi-ye Marja'-e 'Ali Qadr* [A Short Glimpse at the Life of the Eminent Marja'] (Qom: Mo'assese-ye Farhangi-ye Feqh-e Saqaleyn, no date indicated), pp. 3–5. The issue of a woman leading a mixed-gender congregational prayer came to the fore when Dr. Amina Wadud led a mixed-gender Friday congregational prayer service in New York in March 2005. See Juliane Hammer, "Performing Gender Justice: The 2005 Woman-Led Prayer in New York," in *Contemporary Islam: Dynamics of Muslim Life*, Vol. 4 (2010), pp. 91–116.

84. "Takhrib-e Daftar-e Sane'i: Gozaresh Tasviri" ["Office of Sane'i Vandalized: Photographic Report"], *Saanei.org*, June 13, 2010, <http://saanei.org/?view=01,00,04,00,0#01,02,04,101,10>; <http://saanei.org/?view=01,00,04,00,0#01,02,04,102,10>.

85. "Jame'eh-ye Modarresin Ayatollah Sane'i ra Faqed-e Marja'iyat 'Onvan Kard" ["Council of Religious Scholars Dismisses Ayatollah Sane'i from Authority"], *IranianUK*, January 2, 2010, <http://tehranlondon.com/article.php?id=45209>.

86. "Daftar-e Ayatollah al-'Ozma Sistani: Jame'eh-ye Modarresin, Marja'-e Tashkhis-e Salahiyat-e Maraje' Nist" ["Office of Grand Ayatollah Sistani: Council of Religious Scholars is not Authorized to Determine Competence of a Marja'"], *IranianUK*, January 4, 2010, <http://tehranlondon.com/article.php?id=45292>.

principles.⁸⁷ He argues that it is not possible to formulate a cogent and defensible legal methodology without a thorough knowledge of hermeneutics.⁸⁸

According to him, the Qur'an does not prescribe any particular form of government; some scholars have favored a consultative-based model [*shura*] because the Qur'an states that previous prophets followed that particular model, as well as hereditary succession. As such, both could not be considered normative. In his view, the Qur'an is more concerned about the final outcome — establishing a just and egalitarian society — than with how that goal is attained. The form of government, therefore, is left to public choice and may differ according to time and place: "If we study the Qur'an carefully, we see that the fundamental criterion it lays down for government is not a particular form or type — which it does not even present as a religious concern — but justice,"⁸⁹ and "legal opinions are not the criteria of justice, but justice [is] the criterion for legal opinions; to put it another way, fatwas are the instruments of justice."⁹⁰

As illustrated in the state models advocated and critiqued, the distinction between eternal principles and the historical models generated as a result of their implementation in a particular historical period is crucial. While the former is immutable and trans-historical, the latter is mutable and context-bound. As such, one would be mistaken to idealize the Meccan, Medinan, or Abyssinian period for all times and circumstances and attempt to replicate it in a different context and time, for doing so would blur the distinction between the immutable principles and their historical realization in a particular context and circumstance.

CONCLUSION

Iran's post-election crisis has expedited the scholars' vibrant discussion of different paradigms and models of governance in a Muslim country. It appears that a noticeable shift is underway in the discourse and practice of Shi'i authority, one that is moving away from Khomeini's formulation of the jurisconsult's absolute and comprehensive authority and toward one that is pluralistic and affords the public the right to play an active role in formulating a civil society. In other words, a transition from *wilaya* [authority and guardianship] over the people to obtaining the right of *wakala* [deputyship or representation] from the people. This approach is in harmony with the paradigmatic practices of the Shi'i infallible Imams, in which they sought public validation and support to confirm their status in the political domain.

87. Mohammad Mojtahed Shabestari, *Heremeneutik, Ketab, va Sonnat* [*Hermeneutics, Scripture, and Prophetic Tradition*] (Tehran: Tarh-e Now, 2002).

88. Mohammad Mojtahed Shabestari, *Ta'ammolati dar Qera'at-e Ensani az Din* [*Reflections on a Humanistic Reading from Religion*] (Tehran: Tarh-e Now, 2004), p. 162.

89. Muhammad Mujtahid Shabistari, "Religion, Reason, and the New Theology," in Lynda Clarke ed., *Shi'ite Heritage: Essays on Classical and Modern Traditions* (New York: Global Publications, 2001), p. 253.

90. Muhammad Mujtahid Shabistari, "Religion, Reason, and the New Theology," p. 255. "Reminiscent of Popper's assertion that the main question is not 'who should rule' but 'how to rule,' Shabestari maintains that the Qur'an and the sunna actually emphasize the 'values of government' and not necessarily the 'forms of government,'" Mehrzad Boroujerdi, *Iranian Intellectuals and the West: The Tormented Triumph of Nativism* (New York: Syracuse University Press, 1996), pp. 168–169.

Arguments in favor of public sovereignty and limiting the jurisconsult's power, as well as for holding him accountable, are being framed in this new medium by reinterpreting religious authority. Such voices were not absent during the revolution's early years, as documented in the speeches and works of Iran's Ayatollahs Mahmud Taleqani (d. 1979), Mohammad-Kazem Shari'at-Madari (d. 1987), Salehi Najafabadi, Montazeri, Kadivar, and Ha'eri Yazdi; Iranian professor Dr. Soroush; and Lebanon's Ayatollahs Jawad Mughniyya (d. 1997), Muhammad Mahdi Shams al-Din, and Muhammad Husayn Fadlallah. They all believed that Khomeini's claim that the textual sources contained sufficient evidence to make a case that a qualified jurisconsult enjoys the same scope of power and authority as the Prophet and the infallible Imams was untenable, tendentious, and constituted a radical departure from the traditional Shi'i perspective.

Such voices are resurfacing with greater intensity. In fact, it can now be argued that it would not be far-fetched to envision a significant curtailment of the jurisconsult's political authority during the Twelfth Imam's occultation because the evidence for such a mandate is lacking, except for those issues that fall in the category of *his-biyya*.⁹¹ In this regard, Shams al-Din was adamant that it is categorically clear that no one has authority [*wilaya*] over anyone else except in an exigency, and even then such authority is strictly limited to the individual sphere.⁹² Resolving social issues and establishing a government constitutes a collective responsibility [*fard 'ala al-kifaya*] and, as such, devolves upon the entire community (not just the jurists). He has coined a specific phrase for this: *wilayat al-umma 'ala nafsiha* [authority to administer society resides in the people themselves], on the grounds that the people are obligated to formulate a system of governance by way of consultation [*shura*], one that is in accord with the general Islamic principles. They may decide to delegate authority to jurists or someone else to represent them, but this would constitute a form of delegation [*wakala*] and not a pre-established authority [*wilaya*] over the public in favor of the jurists. Fadlallah, who also disagreed with Khomeini's version of the jurist's absolute authority, at times used the phrase *wilayat al-fiqh* [authority and governance of jurisprudence] instead of *wilayat al-faqih* [governance of the jurisconsult] to make it clear that the jurists do not possess absolute powers and that their conduct and behavior are circumscribed by *fiqh* [substantive law].⁹³

According to these and other ayatollahs, the public retains its right to choose its political leader through consultation and seeking its own benefit and welfare. Administering a society and politics are issues that intelligent and qualified people can undertake successfully because such tasks do not require any special training in the religious

91. These are limited to managing the affairs of those who do not have a guardian, such as minor or insane people. It also includes overseeing and managing the religious endowments and inheritances. This circumscribed guardianship is observable in Iraq, where the system of governance is trying to preserve the religious ethos and Iraqi identity without turning the country into a theocratic state.

92. Muhammad Mahdi Shams al-Din, *Fi al-Ijtima' al-Siyasi al-Islami* [Islamic Political System for the Society] (Beirut: al-Mu'assasat al-Jami'iyya li-l-Dirasat wa-l-Nashr, 1992), pp. 178–9 and *Nizam al-Hukm wa-l-Idara fi al-Islam* [System of Government and Administration in Islam] (Beirut: al-Mu'assasat al-Jami'iyya li-l-Dirasat wa-l-Nashr, 1991), pp. 410–411.

93. Jamal Sankari, *Fadlallah: The Making of a Radical Shi'ite Leader* (London: Saqi, 2005), pp. 286–287.

sciences. Therefore, the jurists have no priority over others when occupying these roles. The whole discourse of religious authority is permeated with a transition from the jurisconsult's sphere of governance and authority to one in which he supervises [*nezarat*] and guides [*hedayat*] the society as a result of having been provided a mandate by the public to do so. In this model, the institutions of the 'ulama' and the ruler would remain separate instead of being merged under a single supreme jurisconsult and thus, providing for checks and balances and reduction in abuse of power and corruption. This is similar to the model proposed by Ayatollah Mohammad-Hoseyn Na'ini (d. 1936) during the constitutional era: minimal clerical participation in the mundane and routine aspects of governing the state's day-to-day affairs, with the exception that the jurists require public deputization [*vekalat*] to represent them because the former do not enjoy any inherent authority [*velayat*] on account of their status as jurists.