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## **Session 30: The Connection between the Absolute Guardianship of the Jurist and the Islamic Government Establishment**

### **Balance between prerogatives and duties in the Islamic state**

Whenever a responsibility is entrusted to a person or a duty is assigned to him, certain prerogatives must be granted to him so that he can exercise them in discharging his duty or responsibility. The heavier responsibilities of the Islamic state in terms of magnitude and scope demand greater prerogatives and facilities than those of other governments in order to do justice to them. We shall cite an example in order to make this point clearer and more empirical.

With incessant technological advancement and transformation in the recent past, new conditions and situations have emerged in human society requiring a change in the manner of interaction, way of living and attitude towards the environment. New vistas like exploration of outer space have been opened to mankind. When cars were not yet invented, people had contracted roads and narrow pathways which could give way to only horses and the like. In some parts of ancient cities such a condition still exists. Yet, when the number of vehicles multiplied, people had no option but to commute within the city through vehicles. They had to expand the narrow roads and construct streets and highways to make traffic easy and comfortable and prevent any possible dangers and accidents.

Once the state and its officials want to construct and expand roads and streets, they have no option but to exercise authority over the lands and houses of people and demolish them. If the state is expected to make traveling comfortable, but not authorized to demolish some houses (along the streets to be expanded or constructed), such a demand is absurd, illogical and impractical. So, the state must have such authority to be able to discharge its duty. The state has to compensate for the damage caused and rehabilitate the affected people somewhere else.

## Connection between absolute guardianship (*wilayat-e mutlaq*) and government prerogatives

In Shi'i jurisprudence [*fiqh*], the Islamic government's possession of necessary and sufficient prerogatives for the performance of its responsibilities in line with discharging of responsibilities is attributed to the absolute guardianship of the *faqih*.

In the Qur'an, traditions and statements of jurists [*fuqaha*], usually the word "guardianship" [*wilayah*] is used instead of "government" [*hukumah*]. Apart from that, the word *wilayah* is more appropriate than the word *hukumah*—just as the Supreme Leader Ayatullah al-'Uzma Sayyid 'Ali Khamene'i pointed out, the connotation of the word *hukumah* is laden with a sense of dominance and imposition—as the word *wilayah* is more profound and associated with love and affection. At any rate, the word *wilayah* can be used in lieu of *hukumah*, as one who regards "government" as necessary for society also feels the same about "guardianship" for society in juristic parlance and usage.

Given these introductory remarks, we argue that if this *wilayah* enjoys all prerogatives through which all responsibilities can be discharged and all needs of society addressed in accordance with Islamic and legitimate standards, it can be said that this *wilayah* is absolute. But if the *wali al-amr* [Guardian or Master of the Affair] has *wilayah* only to the extent necessary, i.e. only in cases where the lives of some people are in danger that we believe in him to have the right to exercise authority over the properties of people, and no authority in city development and beautification as well as construction of green zones (parks) and squares, it is said that this *wilayah* is limited and conditional.

## People's skepticism on absolute guardianship

We are explaining these things because some people, in a bid to misguide the people in general and the youth in particular, are poisoning their minds by pointing out certain fallacies in the theory of *wilayah al-faqih*. Initially, they objected to the word *wilayah*, saying that "guardianship" [*wilayah*] is applicable to children and the mentally retarded. *Wali* means "guardian" and is needed by those who do not have the necessary intelligence and capability to administer their daily lives. So, anyone who advances the theory of *wilayah al-faqih*, in reality regards the people as having low intelligence quotients (IQs) and needful of guardians.

This fallacy is very clear and self-evident. Just as the *wilayah* of the *Ahl al-Bayt* ('a) does not literally mean their guardianship of people and the latter's need for a guardian, *wilayah* here is used to mean *hukumah*, i.e. administering social affairs and overall management of society. *Wilayah al-faqih* means that certain individuals are authorized by God to administer the primary affairs of society, and it is not that those who are under the rule of *wilayah al-faqih* and Islamic government are children, the mentally retarded or psychopaths!

They have further committed a fallacy with respect to the word *mutlaq* [absolute]. They have claimed in some of their writings that “absolute guardianship” is tantamount to polytheism [*shirk*]. Thus, accordingly, those who believe in “absolute guardianship” are polytheists and have associated deities to God because apart from Him who is the Absolute, they have also recognized the *wali al-amr* as “absolute”! Sometimes, one does not know how to react to these childish and silly claims.

Let me say briefly that firstly, in the Islamic texts, the Qur’an and traditions in particular, the word *mutlaq* has never been used for God, and in Arabic lexicon it is not correct to associate the word *mutlaq* to God. If ever out of carelessness or modification of the meaning of *mutlaq*, we associate it to God, it implies that God, the Exalted, is unlimited without any weakness, defect and deficiency.

No one has such a belief about anyone other than God. We believe that the One and Only God has Absolute Perfection without having any defect and deficiency and He has all the eternal Attributes. Obviously, this belief does not necessarily mean that the Islamic state should not have the necessary prerogatives to perform its duties. Basically, these two points have no connection with each other.

“Absolute guardianship” means that the ruler, leader and head of the Islamic *ummah* has the necessary prerogatives to discharge his duties and do what is good for Islamic society, and the *wali al-faqih* may interfere or exercise authority whenever necessary. In order to make this point clearer, we shall explain the Islamic government theory further, though we have already dealt with it earlier.

## **Investigating the structure of Islamic government**

Once the structure and nature of Islamic government is talked about, some people refer to political philosophy books and mention the different types and forms of governments established in human society since time immemorial such as oligarchy, aristocracy, monarchy, and democracy. Nowadays, democracy is divided into republicanism and constitutional monarchy, and republicanism into presidential and parliamentary.

They ask us whether the Islamic government is one of those mentioned forms of government or something distinct. If the Islamic government is republican, it is the same democracy or “government of the people for the people by the people” and thus Islamic government is in no way different. If it is said that Islamic government is a monarchy, then why is the government in Iran called “Islamic Republic”? In any case, has Islam no idea about its form of government, or does it grant freedom to the people to choose the type and form of their government, or has it stipulated a distinct form of government?

In reply to the question on the structure of government according to Islam, many of them have said that Islam does not endorse a particular form of government. To some extent this answer is correct, but it is not devoid of ambiguity. To explain this, I deem it necessary to highlight two points which must not be neglected.

## 1. The extensiveness and irrevocability of Islamic laws

The first point is that Islam and its laws are not confined to a particular time and place. The inalterable and constant laws of Islam have been enacted in such a way that they are applicable to all ages and societies. Meanwhile, a government may be established in a small and limited territory or an island with a small population. It may equally be founded in a country with a population of one million or a country like India or China with a population of about one billion or more than a billion. In any case, the government may assume numerous forms. A small community of one hundred families may have a government of its own.

A country with a population of one billion may also have a government of its own. It is even possible that one day a global government will be established on earth. In view of the diversity of governments, can a model or laws for a government be proposed that would encompass all governments? Or, is it that a particular form should not be determined for the government, and if ever a particular form is presented, it will not be suitable for some societies and not applicable to other societies? For example, if we claim that during the advent of Islam its laws were initially applicable to the small community at Medina, and the government founded by the Messenger of Allah (s) was suitable for the society at that time whose population probably did not exceed a hundred thousand.

Is the model and form which Islam wants to present as the Islamic government the same model and form of the government of the Prophet (s) during the early period of Islam with features and characteristics suitable for a small population of that time with particular moral and cultural elements? Or, is it that Islam is not only devoid of a particular model and form of government but also has not set any pertinent limits, conditions, requirements and rulings?

The fact of the matter is that the Islamic approach is neither of the two. In fact, apart from presenting a specific form of government suitable to its inalterable and constant laws, Islam has introduced a general or overall framework which can integrate changes, variations and numerous or diverse forms. Islam has neither given total freedom to the people to do whatever they want nor presented a limited and narrow form of government applicable only to a certain age and place. The general framework introduced by Islam has a broad scope and span, containing all correct and reasonable forms of government.

We describe this general framework of government as the Islamic government. This framework emerges at a given time with a particular structure and form, and with a different structure and form at another time. Neither of these two forms and structures or any other form or structure for that matter is incompatible and repugnant to the Islamic nature of the government in question.

In other words, Islam does not endorse a particular form or type of government. Its guiding principle is the observance of the general framework; the structure of government should neither be beyond it nor inconsistent with it. The inalterable and constant laws of Islam which have been enacted for all societies up to the Day of Resurrection have a general structure. In contrast, secondary and alterable laws

conducive to particular times and places are also enacted. Among these alterable laws are administrative laws which are issued or approved by the wali al-faqih. To obey and follow these laws in their forms or shapes is obligatory.

## 2. Presentation of government models derived from Islam

The second point is that the goal of the Islamic government is to reach and realize a set of ideal and desirable conditions. But since it is not always possible to achieve them, there is no option but to consider a substitute of the ultimate choice. That is, if the ideal condition is not available, the second choice will replace it, and if the second choice cannot be achieved, the third choice will replace it. This implies that our value system is neither monolithic nor considers value as confined only to all that is ideal. Instead, in the Islamic value system values have a multilayered structure and diverse degrees as well as the most ideal and supreme value. Below this zenith of value, other degrees are also valuable in their own rights. It is not correct that if the ideal value cannot be realized, we should totally give up and not resort to an equally valuable option below it.

The point is that Islam has set an ideal form of government which can be established whenever the said government is headed by the Prophet (s) or an infallible Imam. This ideal option has been explicitly emphasized by God in the Noble Qur'an:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ...﴾

***“O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you...”***<sup>1</sup>

In another verse, He says thus:

﴿وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا...﴾

***“Take whatever the Apostle give you, and relinquish whatever he forbids you...”***<sup>2</sup>

The foremost view of Islam is that an infallible person must head the government and hold the reigns of power so that he can manage and supervise the political apparatus. But a *ma'sum* is not always present among the people to directly hold the reigns of government. Even when a *ma'sum* is present, it does not follow that he is in a position of strength to establish a government and exercise power.

In fact, among our Imams, only the Commander of the Faithful (‘a) and Imam Hasan al-Mujtaba (‘a) for a very short period were able to rule. Since the time of Imam al-Husayn (‘a) the circumstances were not

suitable for the infallible Imams (‘a) to establish an Islamic government. Either the people or majority of them did not support them to establish an Islamic government or an influential section of society prevented them from establishing it. As such, each of the Imams (‘a) was forced to distance himself from the government of the day.

## **Precedence of the notion of “state within a state” in Islam**

In case the government is not under the control of an infallible Imam or a just ruler but an oppressive and *taghuti* regime is established, should people leave all affairs to an illegitimate and tyrannical ruler and totally relinquish government affairs? Are righteous and pious individuals not supposed to properly attend to government affairs at any level and guide society to the extent possible? Undoubtedly, the reply of Islam is in the negative.

In such cases, Islam has set emergency substitutes and maintained that if an infallible Imam is present but has no support in establishing a government, or he is not present and the government is outside the control of his righteous and just successor, the people may, as much as possible, refer in matters related to government to a person who is most similar to a *ma’sum*.

Indisputably, conflicts and disputes always occur in society about personal, family, social, commercial and matters of inheritance. For example, two partners may have a dispute over their shares; inheritors may fight over the inheritance; spouses may have a quarrel. Certainly, in order to resolve these differences people are in need of government decisions. They have to refer to a legal authority that will investigate the differences and discords.

Under the pretext that the government of truth does not exist and an infallible Imam or a just ruler is not in control of government, people are not supposed to be contented with the *taghuti* government, do whatever it commands and reject an alternative. In fact, in particular and limited cases if there is a chance to refer to a person who issues and implements the correct Islamic decree, it is expedient to refer to him. As such, the infallible Imams (‘a) have introduced a scheme for such circumstances and conditions which in modern parlance is described as establishing a “state within a state”.

If the government is in the hands of tyrants and usurpers and the people do not have sufficient power and means to rise up and overthrow them and establish the government of truth, in relation to administrative matters the people are supposed to refer to the *fuqaha* and those who, though not infallible, have been trained in the school of the *Ahl al-Bayt* (‘a) and occupy the highest station of piety and knowledge of religion and who in knowledge and moral conduct are nearest to the infallibles. In relation to their administrative problems people must refer to the *faqih* who has the intellectual capability to deduce and apply the correct Islamic law, has the necessary managerial skill to adjudicate and issue a verdict, and has the highest decree of piety, trustworthiness and credibility.

This statement or the notion of a “state within a state” means that within the vast jurisdiction of an

illegitimate state, small and limited ‘states’ that can to some extent become the sanctuary of people in their administrative problems must be established. In our Islamic culture, such a government is described as “restricted guardianship” [*wilayat-e muqayyad*]—a kind of guardianship which *fuqaha* had even during the time of the infallible Imams (‘a). With the permission of the Imams (‘a), *fuqaha* had the authority to adjudicate, bid and forbid.

Even during the period of occultation [*ghaybah*] the *fuqaha*, though incapable of establishing a government, used to exercise authority in certain cases of litigations, disputes, quarrels, urgent matters, and what is described in our jurisprudence as “financial affairs” [*al-umur al-hasbiyyah*]. In terms of form, substance and extent of prerogatives, however, “restricted guardianship” was considerably different from the “absolute guardianship of the jurist” [*wilayat-e mutlaq-e faqih*].

Throughout the history of Shi‘ism, “restricted guardianship” has been enjoyed by the *fuqaha*, and people, with full satisfaction and confidence used to refer some of their social problems, disputes and differences to them and ask for correct solutions. Perhaps, it is because of this historical precedence that theoreticians are less skeptical about it, and it does not meet much opposition. On the contrary, on account of its lack of long historical precedence in the recent past, and its strictness towards malevolent xenophiles and their illegitimate interests, the “absolute guardianship of the jurist” has been a subject of pusillanimous objection and attack.

## **Imam Khomeini’s presentation of “absolute guardianship of the jurist”**

From the time of occultation of Hadhrat Wali al-‘Asr (may Allah expedite his glorious advent) up to the occurrence of the Islamic Revolution in Iran, the possibility that one day a rightful and truthful government will be established by a duly competent *faqih* was more akin to a dream and illusion.

Even if the people in our country were told, as late as thirty or forty years ago, that one day a *faqih* will topple down the *taghuti* regime, no one would believe it and consider such an idea as nothing but mere daydreaming. It would be like someone saying that a time will come when we will fly without the help of instruments and facilities, for it is believed that such an event will happen only in dreams and never take place in real life.

At that time, it was funny for people to hear someone claiming that a cleric in place of the *taghut* will take control of the country. The people would ask, “Is it possible? How could a person who, could hardly find his daily bread, was not secure even in his home, whose house could be raided, and he, banished, imprisoned and tortured, acquire the power to establish a government?!”

It is true that *wilayah al-faqih* was not actually implemented in the past as it did not seem reasonably probable, but since its assumption was possible, some prominent *fuqaha* advanced the theory of “absolute guardianship of the jurist”. They examined the question: If one day conditions for the *faqih* to

rule are provided and he actually takes charge of government, would his *wilayah* be absolute or limited?

Contrary to those periods of the infallible Imams (‘a), when on the one hand, they practiced dissimulation [taqiyyah] in a position of weakness, deprived of their right to interfere in administrative issues, and people referred some of their problems like disputes and differences to them only in private and acquired their verdicts; and, on the other hand, when the fuqaha distanced themselves from the government and were robbed of the chance to interfere in administrative matters; if a chance appeared for a faqih to rule and he became politically strong enough to establish a government, should he exercise *wilayah* only in “urgent matters” and interfere only in “financial affairs”? Or, should all limitations, conditions and “specific restrictions” on the faqih’s exercise of authority, imposed during the reigns of taghuts and tyrants, be removed, and, exactly like an infallible Imam who is politically capable of establishing a government, should the faqih also have all the prerogatives that an infallible Imam has in the overall administration of society? This option has been presented as the theory of “absolute guardianship of the jurist”.

Among our prominent figures, the one who, in addition to expounding the theory of “absolute guardianship of the jurist” as a juristic proposition, regarded the same as practically realizable, was His Eminence Imam Khomeini (q). Forty years ago, he used to mention in his lectures that there is the possibility of a *faqih* establishing a government in a certain geographical location.<sup>3</sup> The *faqih* would have all the prerogatives of a religious ruler and his authority would not be confined to financial affairs and urgent matters. As far as the interests of Islamic society were concerned, he could exercise authority within the framework of religious standards and Islamic precepts.

At that time, when the Imam discussed this theory, his students accepted it intellectually with good intention, good opinion and affection for him. Yet, they could not imagine that it would be implemented until finally, the Islamic movement in Iran gained momentum and gradually the Revolution triumphed and the Islamic government was established.

So, the “absolute guardianship of the jurist” means that the one who, according to Islam, is competent to rule, and in terms of knowledge, piety and managerial skill is most similar to a ma’sum, and is able to establish a government will have all the prerogatives of an infallible Imam in managing the affairs of society. Once the wali al-faqih enjoys these extensive prerogatives, all laws, executive orders and ordinances to be passed in the Islamic government under the command of the wali al-faqih will be deemed legitimate only through his permission and approval. Without his permission, no one else will have the direct and independent right to legislate or implement a law.

All administrative affairs shall become official by his permission and authority. Under his government, individuals shall implement laws through his designation, or if they are elected according to predetermined laws and arrangements, their assumption of office shall become official through his approval and permission. Thus, without the permission and authority of the wali al-faqih no step shall be deemed official and legitimate.



The Imam used to say time and again: If a government is formed without the approval and permission of the wali al-faqih, it is taghuti. It means that we have no more than two essential types of government: the government of truth and the government of taghut. The government of truth is that which is headed by the wali al-faqih who is the supreme authority in all administrative affairs and issues, and all matters shall acquire legitimacy through his permission and approval. If it is not so, then it is the government of falsehood and taghut, and as the Qur'an states,

﴿...فَمَاذَا بَعْدَ الْحَقِّ إِلَّا الضَّلَالُ﴾

“...So what is there without the truth except error?”<sup>4</sup>

## Description of wilayat al-faqih in the maqbulah of ‘Umar ibn Hanzalah’

In view of what has been said, the prerogatives of the *faqih* are confined to sacred religious standards and laws and do not go beyond them, making it clear that belief in the “absolute guardianship of the jurist” does not mean polytheism or considering someone other than God as absolute. As a matter of fact, according to some narrations transmitted from the infallible Imams (‘a), anyone who disobeys the decree and order of the *wali al-faqih* is a polytheist [*mushrik*].

As narrated in the *maqbulah* of ‘Umar ibn Hanzalah, concerning two believers who had a dispute over religious issues or worldly matters like inheritance, they asked Imam as-Sadiq (‘a) whom they should refer to for judgment and solving of their conflict. The Imam (‘a) dissuaded them from referring to a *taghut* or tyrant ruler but instead ordered them to refer to the narrators of *hadiths*, religious scholars and experts, saying:

﴿...فَإِنِّي قَدْ جَعَلْتُهُ عَلَيْكُمْ حَاكِمًا، فَإِذَا حَكَمَ بِحُكْمِنَا فَلَمْ يَقْبَلْهُ مِنْهُ فَإِنَّمَا اسْتَخَفَّ بِحُكْمِ اللَّهِ وَ عَلَيْنَا رَدُّهُ وَالرَّادُّ عَلَيْنَا الرَّادُّ عَلَى اللَّهِ وَ هُوَ عَلَى حَدِّ الشِّرْكِ بِاللَّهِ...﴾

“...For I appoint him as judge over you. Anyone who rejects his judgment is as if he belittles the judgment of Allah and rejects us, and anyone who rejects us is as if he rejects Allah, and rejection of Him is tantamount to associating partners with Him.”<sup>5</sup>

According to the abovementioned tradition, if the duly competent *faqih* establishes a government or takes charge of government affairs, anyone who opposes him and rejects his orders and words is as if he opposes the infallible Imams (‘a) and opposition to them is tantamount to polytheism [*shirk*]. This

polytheism is not in the ontological Lordship [*rububiyyat-e takwini*] of God but rather polytheism in the legislative Lordship [*rububiyyat-e tashri'i*]. The explanation for this is that monotheism [*tawhid*] has different classifications and degrees:

(1) monotheism in creation, i.e. belief in the Unity or Oneness of the Creator of the universe;

(2) monotheism in Divinity [*uluhiyyah*] and servitude [*ubudiyyah*], i.e. belief that no one is worthy of worship but God who is the Absolute Lord and Legislator; and

(3) Divine Unity [*tawhid-e rububi*] which is divided into two: (a) ontological Lordship and (b) legislative Lordship.

“Ontological Lordship” means that we have to consider that the designing and management of the entire universe lies with God and to believe that the rotation of the sun and moon, the taking place of day and night, life and death of man and animals, and the protection of the world and all its inhabitants from destructive collisions and clashes all depend on God. It is He who protects heaven and earth. All beings that come into existence in any part of this vast universe, grow and die, procreate, do anything that manifests their existence are all under the supervision and control of God. No phenomenon is outside His Lordship.

“Legislative Lordship” is only related to the discretionary management of human beings whose movement, impact and evolution, contrary to that of other creatures, depends on their own discretion. For example, God introduces the straight path to man and acquaints him with good and evil, and enacts and issues laws and ordinances for the individual and social life of man.

Based on what has been said about monotheism and its different categories, anyone who denies the legislative Lordship of God, even if he recognizes the ontological Lordship or the Unity of God in creation and servitude, is a polytheist. The same kind of polytheism was committed by Satan who recognized God as the One and Only Creator and His ontological Lordship. As such, he said:

﴿قَالَ رَبِّ بِمَا أَغْوَيْتَنِي لَأُزَيِّنَنَّ لَهُمْ فِي الْأَرْضِ وَلَأُغْوِيَنَّهُمْ أَجْمَعِينَ﴾

“He said: My Lord! As You have consigned me to perversity, I will surely glamorize [evil] for them on earth, and will surely pervert them all.”<sup>6</sup>

It can be noticed that Satan believed in God’s ontological Lordship, regarding Him as his Cherisher and Sustainer. What he denied or rejected was the legislative Lordship and thus he became a polytheist (nay, the first polytheist). Since God the Exalted, makes it obligatory to obey any of the infallible Imams (‘a), anyone who refuses or declines to obey actually denies the legislative Lordship of God and is tainted with polytheism in the legislative Lordship.

Similarly, when an infallible Imam (‘a) appointed or designated a person and made it incumbent upon others to obey him, anyone who did not recognize him or submit to him was tainted with polytheism in the legislative Lordship. So, if Imam as-Sadiq (‘a) said that opposition to the wali al-faqih is tantamount to associating partners with Allah, it was not a hyperbole as he spoke the truth, for it was polytheism in legislative Lordship, which Satan was also tainted with.

Based on what has been said, according to Islam the structure of the Islamic government has different degrees. Its ideal degree can be reached whenever the Prophet (s) or an infallible Imam (‘a) takes control of government. Its lower degree is when government is entrusted to the duly competent faqih who in terms of knowledge, piety and managerial skill is the nearest to the infallible Imams (‘a). One degree lower than this one is that if there is no duly competent faqih, or the faqih accessible to people lacks the competence to manage society, the wilayah and government shall be entrusted to ‘just believers’ because society cannot be abandoned without any government.

Thus, in the presence of an infallible Imam his government or wilayah is most ideal and during his absence the faqih who is most akin to the infallible Imams (‘a) should take control of government. In the absence of such a faqih, a just believer whose sense of justice and piety are such that people trust him and are satisfied with his implementation of laws shall take hold of government though his knowledge and learning is not equal to that of a faqih.

Of course, we hope that the *‘ulama’* and figures that are capable of guiding and managing society are always present so that they can shoulder this responsibility of guiding society. God the Exalted, favored us by blessing us with the dear Imam who guided our society remarkably well. After the Imam, He preserved his righteous student and successor for us, the nearest to the Imam in piety, asceticism, political insight, consideration for the interests of Muslims, management and leadership of Islamic society, and other outstanding characteristics.

## **Islam’s view on separation of powers**

Another subject which needs to be dealt with at present is the separation of powers and government responsibilities. According to Islam, the government does not have a specific form or type suitable to a society with particular characteristics. According to Islam, the government may have a structure or form which is suitable to a small society composed by a limited number of families, or to a country with one billion-strong population or even a global society. Naturally, all the responsibilities and special functions of the government that bespeak of the *raison d’être* of the state—especially in densely populated societies—cannot be shouldered by a single or two persons.

Issues related to internal security, defense against foreign enemies, supervision of economic activities and international affairs, conduct of international relations, the observance of Islamic rites and the implementation of Islamic laws are also extremely heavy responsibilities. So, the option is to have division of labor. This division of labor can be done in two ways, viz. horizontally and vertically. That is,

both sections of government activities are located in two separate compartments comprising two triangular shanks which do not intersect each other at the middle and finally end at the top of the pyramid.

In plain language, the best and most expressive similitude of government is a pyramid, hence, the term “pyramid (hierarchy) of power” has been chosen by political philosophers for government. The hierarchy of power is like a pyramid which has its own specific features. It consists of a triangular base and different sloping sides that meet in a point at the top.

Once we consider the government in its general sense, each side of the pyramid represents a section of government responsibilities. Based on the division of power in the political and legal philosophy of Montesquieu government power is divided into three branches—legislative, judiciary and executive—the three ‘sides’ or sections of government deal with legislation, adjudication and implementation. One part of government activities consists of codifying general and particular laws and ordinances; another part is related to the resolution of conflicts and differences according to law; yet another part deals with implementation of laws and management of society.

## **Grounds for overlapping of functions**

It is true that division into three is appropriate and proper, but it must be noted that drawing dividing lines is not an easy job. In practice we can never totally remove enactment and codification of laws and ordinances as well as ratification of bylaws from the executive branch and not allow executive power at any level to engage in the enactment of executive orders and bylaws. Nowadays, in all democratic countries that have recognized the separation of powers, there is willy-nilly a degree of overlapping between legislation and implementation. The most evident form of overlapping of functions can be observed in parliamentary systems. Meanwhile, democratic systems are classified into two: parliamentary and presidential:

1. The parliamentary system of government is formed on the basis of the fusion of power. That is, all powers are concentrated in parliament. After the election of members of parliament (MPs) from among electoral candidates of various parties and the formation of parliament, high-ranking executive officials, such as the premier and cabinet ministers are elected from among the MPs. Under this system, parliament grants authority to ministers to head different ministries and it may also take back that authority.

2. The presidential system of government is based on the principle of separation of powers. Under this system, the president or chief executive is not elected by congress. Ministers are directly appointed by the president and the legislature cannot remove them. Reciprocally, the legislature is separate and independent from the executive. Under this system, the essential and irreconcilable difference between membership in congress and membership in cabinet is that the president cannot appoint an MP to a cabinet position unless the said MP resigns from his post in congress.

In the presidential system the president is directly elected by the people, and an overlapping of functions is observed. The codification of some ordinances and bylaws is delegated to the cabinet of ministers. Nowadays, in our country an executive order is legally sufficient to undertake some social, economic and other transactions. That is, the cabinet holds a meeting, and after a series of discussions and deliberations, issues an order which it also implements. Thus, the cabinet has been authorized to enact and ratify a set of ordinances in some cases.

Meanwhile, the function of parliament is legislation and ratification of bills but it also assumes executive functions in some cases. For example, signing contracts with foreign states is an executive matter, and as a rule, the executive has to directly sign them, but because of the importance and sensitivity of this issue, observance of all precautions, prevention of any abuse, essential scrutiny of the conditions of such contracts and necessary investigations and precautions are observed by the cabinet, then deliberated upon by the legislative house and implemented only after ratification and approval by the deputies.

In conclusion, the notion of separation of powers demands that the three powers—judiciary, legislative, executive—function independently but in practice there is overlapping of functions experienced by the varying political systems in the world. Of course, the more the separation of powers is observed, the more autonomous each power will be, and the chances of abuse of power and interference in each other's functions will automatically decrease.

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1. Surah an-Nisa' 4:59.

2. Surah al-Hashr 59:7.

3. See Imam Khomeini, *Islamic Government: The Governance of the Jurist*, trans. Hamid Algar (Tehran: The Institute for the Compilation and Publication of Imam Khomeini's Works, 2001). <http://www.al-islam.org/islamicgovernment> [1] [Trans.]

4. Surah Yunus 10:32.

5. *Usul al-Kafi*, vol. 1, p. 67; *Wasa'il ash-Shi'ah*, vol. 1, chap. 2, p.34.

6. Surah al-Hijr 15:39.

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[1] <http://www.al-islam.org/islamicgovernment>