

Chapter 4: Arguments for Wilayat al-Faqih

Before dealing with the proofs substantiating *wilayat al-faqih*, it is appropriate to explain the meaning of *wilayat al-faqih* first so as to clear up any ambiguity about it and in the light of the clear picture we have, we can examine its proofs.

Ontological guardianship and legislative guardianship

Ontological guardianship [wilayat at-takwiniyyah] and legislative guardianship [wilayat at-tashri'iyah]

Perhaps, there is no need to note that by *wilayat al-faqih*, we do not mean the ontological guardianship. Rather, we try to prove the legislative guardianship of *faqih*. *Wilayat at-takwiniyyah* which means having authority over the entire universe and the rules governing it is basically related to God, the Exalted, the Creator of the entire universe, the order of creation and the laws governing them.

Sometimes, certain examples of this guardianship are granted by God to some of His servants, whereby they can exercise authority over whatever exists in the universe. The miracles and wonders shown by the prophets (‘a) and divine saints [*awliya*’] are among these examples. According to the Shi‘ah, the most extensive example of ontological guardianship granted to the servants of God is that which God granted to the Prophet of Islam (S) and the infallible Imams (‘a) after him. In any case, in our the discussion of *wilayat al-faqih* we are not concerned with the idea of exercising authority over the system of creation the laws of nature though sometimes a *faqih* having such a quality may have miracles [*karamah*].

The question of the management of society which concerns the Prophet (S) and the infallible Imams (‘a) as well as the *faqih* is connected to their legislative guardianship [*wilayah at-tashri’i*]. That is, it is the question to which the Qur’an refers in some verses, such as

“The Prophet is closer to the believers than their selves”¹

and in some *hadiths*, such as “Of whosoever I am Master [*mawla*], then ‘Ali is also his Master [*mawla*].” Legislative guardianship has a legal basis. That is, a person can, through laying down laws and executing them, have authority over the people and members of the society, and it is incumbent upon them to submit to him and to comply with the laws. The meaning of

“The Prophet is closer to the believers than their selves”

is that the decision made by the Prophet (S) regarding a Muslim or Islamic society is binding and has precedence over the decision they themselves make concerning their personal and individual affairs. In other words, the society is in need of some center of power that has the power and right to decide on social issues and his decision is final. In the aforementioned verse, God has specified this epicenter of power which has dominance over all.

As such, *wilayat al-faqih* does not mean one’s guardianship over the insane and ignorant; rather it means the legal authority and right of law-making, decision-making and execution which we think the *faqih* has regarding the administration of the society’s affairs and social issues. For this reason, we regard him as superior to others, and since right and duty are inseparable and intertwined with each other, once proved the *faqih* has this right, it follows that people have to respect this right and obey the *faqih*’s decisions, orders and rules. As such, on the basis of the verse,

“The Prophet is closer to the believers than their selves,”

if the Prophet (S) orders a person to go to the battlefield, he or she has to obey even though he or she does not like to go. Or, if the Prophet (S) orders a person to contribute for the battlefield even though he or she has given *khums*² and *zakat*³ and no religious levy is due to him or her, it is incumbent on him or her to obey and has no right to object.

The late Imam Khomeini (may Allah elevate his station) often cited this example in his lectures: “If an Islamic ruler asks me to hand this cloak of mine over to him, I would obey and say, “With pleasure”. Whenever the *wali al-faqih* sees that the expediency of the Islamic society demands that I should hand over to him my cloak, I have to obey and give it over.” This is the true meaning of *wilayat al-faqih* which characterizes our culture and it is taken for granted. Men and women, young and old, rural and urban, are familiar with it and accept it.

There are numerous cases, which support this fact, the most famous of which is the tobacco controversy and the religious edict issued by the late Mirza Shirazi.⁴ All the Shi’ah at that time believed that the ‘*ulama*’ and *mujtahidun* are the successors of the Imam of the Age (‘*a*) and if the successor of the Imam (‘*a*) says something he has to be obeyed. Therefore, when the late Mirza Shirazi declared, “Today, the use of tobacco is unlawful [*haram*] and tantamount to war against the Imam of the Age (‘*a*)” they threw away and smashed their hookahs, and no one knew what happened. Until the day before, the use of tobacco had been lawful and was not a problem. Does God’s decree on the lawful [*halal*] and the prohibited [*haram*] change?! Everybody, including the ‘*ulama*’ and the *maraji’ at-taqlid* who issued

religious edicts [*fatawa*] regarded themselves bound to observe this decree of Mirza Shirazi.

Now, in light of this explanation and clarification of the true meaning of *wilayat al-faqih*, we will, after discussing one point, embark on the proofs substantiating the idea of *wilayat al-faqih*.

Is wilayat al-faqih founded on imitation [taqlid] or on research [tahqiq]?

Since the issue of *wilayat al-faqih* is an offshoot of the question of Imamate [*imamah*], some say it is among the subjects which are relevant to scholastic theology [*ilm al-kalam*]. *Ilm al-kalam* technically means the science dealing with the subjects related to the principles of religion [*usul ad-din*], i.e. the subjects about God, prophethood [*nubuwwah*] and the Day of Resurrection [*ma'ad*]. After establishing the idea of prophethood in *ilm al-kalam*, this question arises: "After the Prophet of Islam (S), what becomes of the issue of leadership of the Islamic society?" Following this question, the question of Imamate can be discussed, and according to the proofs at their disposal, the Shi'ah believe that the infallible Imam has the right to lead the society after the Prophet of Islam (S).

After establishing the idea of the Imamate of the infallible Imams ('a), this question is posed: "In a time like ours when we practically have no access to the infallible Imam, what must the people's stance with regard to the leadership of the Muslim society be?" It is in pursuit of this question that the question of *wilayat al-faqih* is discussed. Since it is commonly known that "Imitation [*taqlid*] in matters connected to the principles of religion is not permissible," some imagine that because the issue of *wilayat al-faqih* is, as stated above, among the subjects related to the principles of religion and scholastic theology, it follows that this issue, like the question of proving the existence of God or the prophethood of the Prophet (S), is among the issues which one has to investigate [*tahqiq*] by himself, and in sum, it is not a matter of imitation [*taqlid*].

As a matter of fact, this a notion is not correct, firstly, because it is not correct to assume that it is not permissible for one to practice *taqlid* in every issue connected to scholastic theology or to the principles of religion, and one has to prove it through solid and convincing arguments. In fact, there are so many theological issues in which people have to practice *taqlid* and see the view of an authority about them.

For example, the issue of questioning the dead person on the "first night in the grave" is among the subjects related to the Day of Resurrection [*ma'ad*]. Yet, concerning such questions like what, in essence, is the "first night in the grave" and if, for instance, a person is buried at daytime shall we wait until the night comes and then we can say that it is his or her first night in the grave? If the corpse is burnt and turned into ashes and the ashes were blown by the wind or fell prey to rapacious animals and nothing of it remains to be buried, will the dead person have no "first night in the grave"? In addition to tens of other questions about the "first night in the grave," most of us have not investigated by ourselves nor do we have sufficient expertise to do research on them.

We have known the answers to such questions through reading books or listening to the lectures of the great figures whom we trust. Besides, although *wilayat al-faqih* is, in a sense, a theological issue and among the subjects pertaining to prophethood and Imamate, it is not among the issues about which every person can research because it has a special character. Thus, one has to rely on a trustworthy expert's opinion.

Secondly, although the issue of *wilayat al-faqih*, which is considered an offshoot of the discussion on Imamate, is a theological issue and among the subjects pertaining to the principles of religions, regarding the idea that it is incumbent upon the people to obey the decree of *wali al-faqih*, what the duties of the *wali al-faqih* are, what his jurisdiction is and similar other questions, it is considered a juristic issue.

For this reason, the *fuqaha* have dealt with it in their books of *fiqh* and in juristic discourses. There is no doubt that concerning the issues related to Islamic jurisprudence (or, the very branches of religion [*furu' ad-din*]), *taqlid* is permissible and it is obligatory for most people.

At any rate, it is necessary to notice that the issue on proving *wilayat al-faqih* is a specialized one, the investigation of which requires particular tools and expertise. However, since many people ask about it and it has become one of the society's current and basic issues, we shall hereby try to enumerate the proofs substantiating *wilayat al-faqih* in a relatively simple manner. It is obvious that for further explanation, one has to refer to the books, magazines and discussions which deal with this issue.

The proofs substantiating wilayat al-faqih

The proofs which are introduced to establish *wilayat al-faqih* are classified as intellectual [*'aqli*] and transmitted [*naqli*]. It is worth noticing that the Shi'ah '*ulama*' believe that in proving a religious injunction, we can make use of four types of proofs: the Qur'an, *Sunnah* of the Infallibles ('*a*), consensus [*ijma'*], and reason [*'aql*].

According to the Shi'ah '*ulama*', in proving a religious injunction, our proof should not necessarily be based on a Qur'anic verse or a *hadith* but a religious injunction in Islam can be established through reasoning and a sound intellectual proof. As such, according to Islamic jurisprudence, citing an intellectual proof for proving *wilayat al-faqih* is in no way less important than citing transmitted proofs, such as Qur'anic verses and *hadiths*. Here, we shall mention two intellectual proofs and two transmitted proofs and thereby try to prove *wilayat al-faqih*.

Intellectual proofs

The first intellectual proof

In brief, this proof consists of the following premises:

1. For ensuring individual and collective welfare for mankind, and avoiding chaos, turmoil and corruption and decadence of the social order, it is necessary for a society to have a government.
2. The ideal government in its loftiest and best form is the government which is ruled by an infallible Imam.
3. For this reason, when it is not possible to achieve a necessary and exigent thing in its ideal and optimum level, we should achieve what is nearest to the ideal level. Consequently, when the people are deprived of the blessing of the government of the Infallibles (‘a), their aim should be achieving what is nearest to the ideal government.
4. The nearness of a government to the government of the Infallibles [*ma‘sumin*] is crystallized into three main things: first, having knowledge of the general rulings of Islam (expertise in Islamic jurisprudence [*fiqahah*]); second, having moral and spiritual excellence whereby one can curb his carnal desires, physical threats and worldly temptations (God-wariness [*taqwa*]); third, having expertise in the management of society represented in such qualities and attributes like social and political acumen, awareness of the international issues; courage vis-à-vis the enemies and offenders, right judgment in identifying the priorities, etc.

To sum up, during the period of occultation of the infallible Imam (‘a), the one who is most efficient and best of those who enjoy the requirements is to assume the leadership of the society and by holding the highest post of the government, he is to organize its organs and direct it toward perfection.

Now, we shall elaborate on this proof and each of its premises:

The first premise of this proof is the well-known discussion on the necessity of the existence of government with which we have dealt in the previous chapters. In the mentioned discussion we pointed out the presuppositions of the theory of *wilayat al-faqih*, stating that one of this theory’s presuppositions acknowledges the urgent need of society for government and we said that the vast majority of political thinkers and others accept this principle and none raises doubt about it except anarchists and Marxists who have certain views about it. In any case, there are numerous solid grounds for the need of society for government which confirm this point. In this regard, the Commander of the Faithful, ‘Ali (‘a) says:

لَا بُدَّ لِلنَّاسِ مِنْ أَمِيرٍ بَرٍّ أَوْ فَاجِرٍ.

“People cannot do without ruler, good or bad.”⁵

This statement clearly indicates the urgent need of society for government.

The second premise of this proof is clear it needs no elaboration. What is meant by the “Infallibles”

[*ma'sumin*] here is the Prophet (S) and the twelve Imams (a) who, in our belief, have the characteristic of *ismah* [infallibility]. That is, they do not commit any sin or mistake intentionally or unintentionally, and their behavior, action, thinking, and decision are free from imperfection or mistake.

This peculiarity makes them most suitable to take charge of government because rulers may either stray from the path of truth and justice and corrupt the society due to their involvement in personal and carnal interests, or on account of their mismanagement, blunders, and incorrect and unsound decisions, they may give way to the prevalence of corruption and wastage of the society's interests.

But an infallible person neither commits sins nor makes mistakes in thought and action because he enjoys the *'ismah* [infallibility]. Meanwhile, it is argued in *'ilm al-kalam* that the characteristic of *'ismah* is also rooted in abundant knowledge and utter insight which are attributed to the Infallibles (*'a*). In other words, the *ma'sum* is a perfect man who, by virtue of the possession of intellect and knowledge par excellence, does not consciously or unconsciously fall prey to the snare of any sin and mistake.

Therefore, the reason of every sensible person confirms that the government of such a person enjoys all the virtues of an ideal and desirable government and achieves the highest possible welfare for the society.

The third premise of this argument is, perhaps, the most significant one. In explaining this premise, we had better cite one or two examples:

Let us assume that ten persons—from among the most distinguished personalities, each of whom is so important and useful for the society—are on the verge of drowning and if we use all the facilities, equipments and rescuers at our disposal, we can save only seven of them and the remaining three will drown.

What will, in this case, the dictate of a sound mind be? Will it be sensible to say that since it is impossible to save all the ten persons for three of them will definitely drown, there is no need to attempt to rescue them? Or, will it be sensible to say that if it is possible to save all the ten, then action has to be taken to rescue them all but if it is not possible to do so, then if we want to rescue the remaining seven it makes no difference if we save all the seven, or only six or five of them, or even only one of them and if it is not possible to save the ten, what is important is the very idea of setting out to rescue them, but in spite of the possibility of saving the remaining seven, it makes no difference if we set out to save all of the seven or, for example, just two or even one of them?

Or, will it be sensible that if it is not possible to save all the ten persons as an absolute and perfect expediency, we have to do our best to save all the remaining seven persons (as the nearest possible level to the absolute and perfect expediency) and we are not allowed to neglect even one of them, let alone disregarding, for example, six or five persons and making no effort to rescue them? The definite dictate of reason is the third option and all other options will be rejected by reason.

Or, let us suppose that a person was attacked by a shark in the sea, and we know that even if we did our best to rescue him, one or both of his legs would be lost. In sum, even if we succeeded in rescuing him, some parts of his body would be lost.

The question is: Regarding this scenario, what will be the dictate of reason? Will it suggest that since we cannot get him out safe and sound, then it is of no use attempting to rescue him and we should only sit and watch what is going on? Or, will the reason of every a sensible, conscientious person dictate that although one or both of his legs will certainly be amputated and some parts of his body will be damaged, in any case, he has to be rescued, and the impossibility to rescue him safe and sound (as a hundred percent expediency) is no excuse for not attempting to rescue a one-legged person (as an incomplete expediency) and to watch how his legs devoured by the shark? Now the answer is clear.

The dictate of reason in the stated two examples is, in reality, based on a general rule which is accepted by reason and it is the very rule that comprises the third premise of our argument, and that is, *if it is impossible to obtain a necessary and exigent thing at its best, the nearest possible level to it has to be sought*. In fact, our present discussion is a manifestation of this general rule. The expediency of having a government is a necessity which no one can deny.

The ideal and desirable type of this expediency is not attainable except in the government of the Infallibles ('a). But when we do not practically have access to the Infallibles and their government, and we cannot attain expediency in its best, should we sit and do nothing? Or, are we allowed in spite of the possibility of attaining the nearest level to the ideal expediency to overlook it and be satisfied with its lower levels? The dictate of reason is that under the pretext of not having access to the ideal and desirable level of government, we should not totally dispense with the need for government.

Neither should we regard all governments to be equal in spite of their different levels of goodness and badness and approve of them in the same way. Instead, we should seek to establish a government which will be nearest to that of the Infallibles ('a) and expediency nearest to the ideal one.

For explaining the fourth and last premise of this argument, we see that the things which contribute to the achievement of the highest level of expediency of government in the government of an infallible one are not all the characteristics he enjoys including his behavioral, moral, intellectual, physical and outward, emotional and psychological, domestic, and other peculiarities, and the things that have major contribution in this regard are, firstly, his full and all-dimensional knowledge of Islam and Islamic laws according to which he can direct the society toward the straight path of Islam and Islamic values; secondly, his absolute immunity from any kind of corruption, error, sin, selfishness, etc.; and finally, his comprehensive and perfect insight and competence in social conditions and management of social affairs.

Therefore, when we say in the third premise that we have to strive for achieving the nearest type of government to that of the Infallibles ('a), we refer to the government which is headed by a person who, in

terms of all the three characteristics, is the best and most brilliant in the society. Since full acquaintance with the Islamic laws is among these characteristics, it follows that this person has to be a *faqih* because a *faqih* is capable of defining Islamic laws through research. Of course, only to be a *faqih* is not enough because having the other two characteristics, viz. God-wariness [*taqwa*] and expertise in managing the affairs of society, are also necessary.

As such, according to these premises, the soundness of each of which we have examined separately, the logical and definite conclusion will be that when we have no access to an Infallible or the government led by an Infallible one, we have to turn to a duly competent jurist [*faqih jami' ash-sharayat*] who has the right to rule, and when such a person is found in the society, the rule of others will not be legitimate or permissible.

The second intellectual proof

This proof consists of the following premises:

1. Guardianship over people's properties, honor and lives is among the things which concern Divine Lordship [*rububiyyat-e ilahi*], and it is only with the designation and permission of God, the Exalted, that guardianship can be legitimate.
2. This legal authority and right of custody of the honor and lives of people has been given by God, the Exalted, to the Holy Prophet (S) and the infallible Imams ('a).
3. During the time when the people are deprived of the presence of an infallible [*ma'sum*] leader among them, either God, the Exalted, has given no attention to the implementation of the social laws of Islam, or He has given the permission to the most appropriate person to implement them.
4. The assumption that during the time of the society's lack of access to an infallible leader God has given no attention to the implementation of social laws of Islam is contrary to the divine purpose, inconsistent with wisdom and that which is not worthy of being preferred. According to the second assumption, we can realize through the definite dictate of reason that permission has been given to the most appropriate person to implement the social laws.
5. A duly competent jurist, viz. the *faqih* who possesses the two qualities of God-wariness [*taqwa*] and expertise in governing society and ensuring its welfare has a greater authority than any other person.

Hence, a duly competent jurist is the best and most appropriate person who has gained the permission of God, the Exalted, and infallible saints [*awliya*] ('a) to implement the social laws of Islam when the people are deprived of an infallible leader. Below is a detailed explanation of this proof and its premises.

The first premise is the one which we have mentioned many times. In discussing the presuppositions of the theory of *wilayat al-faqih* and the role of the people in Islamic government and the basis of

legitimacy, we have relatively elaborated on it. The conclusion we reached was that since God is the Creator and Master of the entire creation including human beings, and since according to the general dictate of reason, to exercise authority over the property of others without their permission is an unjust and unacceptable act, it follows that God has the right to exercise authority over man and his property, and in lower level, this right may be given by God to some human beings.

In the second premise which is concerned with the role of the people in Islamic government and we said that according to all Muslims' belief, the right to exercise authority over the properties, honor and lives of the people have been entrusted to the Holy Prophet (S) by God. In the same token, the Shi'ah believe that after the Prophet (S), this right has also been granted to the twelve infallible people.

The third and fourth premises, in reality, answer this question: "In a time like ours when the people have no access to the Prophet (S) or to one of the infallible Imams ('a), what decision should be taken?" Has God, the Exalted, besides the many social laws in Islam whose implementation requires having an administrative system and political power, taken no care to these laws, and given attention only to the personal laws of Islam and their implementation, or has He emphasized the implementation of the social laws of Islam as well? In other words, according to the dictate of reason, during the absence of an infallible [*ma'sum*] in the society, only two things are possible: Either the purpose of God is to implement the social laws of Islam or not to implement them. Now, we shall examine what is for and what is against each of these propositions.

If we say that during the absence of the Infallibles ('a), God does not want to take care of implementing the social laws of Islam and suffices Himself with the personal obligations such as prayer, fasting, *Hajj* pilgrimage, and ritual purification and impurity, this will be contrary to the wisdom of God and preferring that which is not worthy to be preferred. Let us elaborate on this point.

In principle, we believe that the reason behind founding the system of "prophethood" [*nubuwwah*] and sending down prophets ('a) and heavenly scriptures is that God, the Exalted, has not created this world and human beings without a purpose. In fact, His purpose is to bring every creature to perfection commensurate with its existential potentiality and man is no exception; he has been created to attain perfection.

Yet, since man is unable to define his ultimate perfection and its exact limits and path by relying solely on reasoning, God, the Exalted, has guided man and shown him the way to perfection by sending down prophets ('a) and making known to him the laws and commands through religion, and all these religious commands and laws have certain effects on man's perfection. As a matter of fact, religion has been presented to man to enable him attain perfection.

Given this analysis, if we assume that God, the Exalted, has suspended and disregarded an immense part of the laws of Islam, this will mean that God has abandoned His purpose, and that is man's attainment of perfection because what ensures man's achievement of felicity and perfection

commensurate with his existential potentiality is the set of religious laws and commandments, and ignoring some of them is strongly refused by the Qur'an:

﴿ أَفْتُومِنُونَ بَعْضَ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ فَمَا جَزَاءُ مَنْ يَفْعَلُ ذَلِكَ مِنْكُمْ إِلَّا خِزْيٌ فِي الْحَيَاةِ الدُّنْيَا وَيَوْمَ الْقِيَامَةِ يُرَدُّونَ إِلَىٰ أَشَدِّ الْعَذَابِ ﴾

“What! Do you believe in part of the Book and defy another part? So what is the requital of those of you who do that except disgrace in the life of this world? And on the Day of Resurrection, they shall be consigned to a severer punishment.”⁶

In principle, if the social laws of Islam had had no impact whatsoever upon man's felicity and perfection, they would not have initially been promulgated. So, the effect of this set of laws on the felicity and perfection of man is certain, and naturally to ignore them will obstruct man's attainment of bliss and perfection, and it will be contrary to wisdom and God is too wise to ignore them.

In the same vein, as we have shown in the explanation of one of the premises of the first rational proof, according to the dictate of reason, if it is impossible to obtain necessary expediency in its ideal and most desirable form, it is necessary and obligatory to obtain what is nearest to its ideal and most desirable form, and one should, under the pretext of impossibility of obtaining the good thing in its best, neither totally overlook it nor suffice himself with its lower degree when it is possible for him to attain a higher level.

Now, in view of this rule, we say that the prerequisite for the implementation of the social laws of Islam is the establishment of government whose perfect model is the government of the Infallibles ('a). However, in case of lack of access to the Infallibles ('a) and when they are not present among the people, there are three possibilities:

(1) By giving the permission to implement these laws to the most appropriate person, we can obtain the highest degree of expediency after the government of the Infallibles ('a) as a result of implementing these laws;

(2) Notwithstanding the possibility of obtaining a higher level of expediency, we consider all the levels of expediency to be identical and to obtain a higher level as not necessary;

(3) In spite of the possibility of obtaining some levels of expediency through the implementation of social laws of Islam, we totally disregard this expediency and suspend the implementation of the social laws of Islam.

It is obvious that the first possibility is the most preferable while the other two are being preferred over, and preferring what is being preferred over to what is preferable is unsound and never becomes a wise

person.

Given this argument, the third and fourth premises have been proved convincing and so far it has become evident that the dictate of reason entails that during the lack of access to the Infallibles (‘a), the permission to implement the social laws of Islam has been given to the most appropriate person, and if it was not so, there would be violation of the purpose, refutation of wisdom, and preferring what is being preferred over to what is preferable on the part of God, the Exalted.

Now, after proving that during the absence of the Infallibles (‘a) the permission to implement the laws of Islam has been granted to the most appropriate person, this question will arise: “Who is the most appropriate person and what makes this person most qualified, competent and worthy to assume the post?” We clearly stated the answer to this question while explaining the fourth premise of the first rational proof and we said that among the qualities and attributes of the Infallibles (‘a) that cause their government to be most perfect are these things: infallibility [*‘ismah*], knowledge and complete awareness of the laws and injunctions of Islam, and good acquaintance with social issues and the dexterity in managing them. Thus, anyone who possesses all these three attributes and most similarity and nearness to the infallible Imam (‘a) is the best and most appropriate of the rest. And such a thing applies to no one but the *faqih* who has a good knowledge of Islam, is pious and has the expertise required for managing the affairs of the people and society.

To sum up, a duly competent jurist is the best and most appropriate person who has been given permission by God and the infallible saints [*awliya*] (‘a) to implement the social laws of Islam at the time when people are deprived of the presence of an infallible leader.

Transmitted proofs

We have said that for proving the theory of *wilayat al-faqih*, both intellectual [*‘aqli*] and transmitted [*naqli*] proofs can be cited. The transmitted proofs of this issue are the *hadiths* which prove the people’s turning to *fuqaha* to help them solve their administrative problems (particularly judicial issues and legal disputes) or which introduce *fuqaha* as functionaries [*umana*], caliphs [*khulafa*], inheritors [*waratha*] of the prophets (‘a), and those who manage the affairs.

Regarding the chain of transmission [*sanad*] and authenticity of these *hadiths*, extensive discussions have been made and since it is not possible to mention them here, it is better to refer to certain voluminous books and treatises which focus on this subject. Among these *hadiths* are the *maqbulah*⁷ of ‘Umar ibn Hanbal⁸, the *mashhurah* of Abu Khadijah⁸ and the *tawqi’ ash-sharif* [noble signature] which was a reply to a question asked by Ishaq ibn Ya‘qub, and in our opinion, casting doubt upon the chain of transmission of the mentioned *hadiths* is unjustifiable because their transmitters and contents are well-known. As for their proof that substantiates the designation of *fuqaha* as the agents of Imams (‘a), it is indisputable and if there is no more need for such designation during the period of occultation, it will not be less either.

Therefore, by applying the criterion of designation of *faqih* during the time of presence to the period of occultation and establishing the idea that the designation of *faqih* during the period of occultation through what is technically termed *dalalat al-mawfaqah*, the probability of delegating to the people the designation of *wali al-faqih* during the period of occultation, though there is no proof to support it, is inconsistent with the Legislative Lordship of God (as indicated in the verse, “*Verily, the authority belongs to Allah*” and according to other transmitted proofs). Besides, no Shi‘ah *faqih* (except in recent times) has ever put forward such a probability [*ihhtimal*].

At any rate, the aforementioned *hadiths* strongly corroborate the rational proofs we have mentioned, and even assuming that somebody disputes about their chain of transmission or proofs, our citation of rational proofs will remain valid.

After this preliminary explanation, let us review some of the transmitted proofs that support *wilayat al-faqih*:

1. The *hadith* which is well-known among the *fuqaha* as the *tawqi‘ ash-sharif* [noble signed decree]. This *hadith* has been mentioned by the great and outstanding Shi‘ah scholar [*‘alim*], the late Shaykh as-Sadudq9 in his book, *Ikmal ad-Din*.¹⁰ This signed decree is actually a reply to the letter of Ishaq ibn Ya‘qub written by *Haqqrat Wali al-‘Asr*, the Imam of the Age (‘a). In the said letter Ishaq ibn Ya‘qub posed questions to the Imam (‘a) one of which is: “What do we have to do in case of occurring social problems [*al-hawadith al-waqi‘ah*] during the period of occultation?” In reply to this question, the Imam (‘a) said:

وَأَمَّا الْحَوَادِثُ الْوَأَقِعَةُ فَارْجِعُوا فِيهَا إِلَى رُؤَاةِ حَدِيثِنَا فَإِنَّهُمْ حُجَّتِي عَلَيْكُمْ وَأَنَا حُجَّةُ اللَّهِ عَلَيْهِمْ.

“In case of occurring social problems, refer for guidance to those who relate from us, for they are my argument [*hujjah*] against you, and I am Allah’s argument against them.”¹¹

If what is meant by “occurring social problems” [*al-hawadith al-waqi‘ah*] and “those who relate from us” [*ruwatu hadithuna*] in this signed decree is known, then its proof for our claim which is establishing *wilayat al-faqih* will become clear.

When clarifying the purport of *al-hawadith al-waqi‘ah* mentioned in the text carrying the signed decree, we notice that what Ishaq ibn Ya‘qub means is by far other than the religious laws and issues presented nowadays in the books of practical laws [*risalah al-‘amaliyyah*] firstly because it is clear for the Shi‘ah that regarding these issues, they have to refer to religious scholars and to those who are familiar with the traditions and narrations of the Prophet (S) and Imams (‘a), and thus, they do not need to ask about them.

The same is true of the time of presence of the Imams (‘a) themselves when, due to the emergence of problems like geographical distance and the like, the Imams (‘a) used to tell the people who had religious questions to refer to such people like Yunus ibn ‘Abd ar-Rahman, Zakariyya ibn Adam and the like. The four special deputies [*nawwab al-arba‘ah*] of the Imam of the Age (‘a) during the period of his minor occultation [*‘asr al-ghaybah as-sughra*] (each of whom was a *faqih* and religious scholar) is another example.

In sum, this is not something new for the Shi‘ah. Secondly, if by *al-hawadith al-waqi‘ah* Ishaq ibn Ya‘qub meant religious laws, he would say something like: “What is our duty regarding the lawful [*halal*] and the unlawful [*haram*]?” or “What is our duty regarding Divine laws?” and similar expressions, which are very common in most narrations. Anyhow, the expression, *al-hawadith al-waqi‘ah*, is never used to refer to religious laws. Thirdly, the connotation of words is essentially connected with the situation, and in terms of lexicography and situation, *al-hawadith al-waqi‘ah* never means religious laws.

Rather, it has a very wide meaning which includes social issues, problems and happenings. As such, the question of Ishaq ibn Ya‘qub to *Haqqat Wali al-‘Asr (‘a)* actually means: “Regarding the social issues and concerns which the Muslim community faces during the period of your occultation, what will our duty be and to whom shall we turn for guidance?” In reply to it, the Imam (‘a) wrote: “In this case, you have to refer to “those who relate from us”.” Now, let us see what is meant by “those who relate from us”.

One may possibly argue that what is meant by “those who relate from us” is anyone who cites *hadiths* or narrations from such books like *Usul al-Kafi*,¹² *Wasa’il ash-Shi‘ah*¹³ or any other *hadith* book and narrates them to the people. But if we make a closer examination, we will find that this notion is not correct because in this time of ours anyone who wants to narrate a *hadith* or narration from the Prophet (S), Imam as-Sadiq (‘a) or any other Imam has to be sure, in one way or another, that the *hadith* is really ascribed to the Prophet, or Imam as-Sadiq or any other Imam; otherwise, one has no right to say that Imam as-Sadiq (‘a) has said so-and-so. If one does not have solid evidence that the said *hadith* and narration is ascribed to Imam as-Sadiq (‘a) or to one of the Imams and Infallibles (‘a), and says that it is ascribed to them, this act will be considered lying.

Besides, ascribing to the Prophet (S) and the Imams (‘a) what they have not said is considered a major sin. To be more precise, if someone intends to narrate a *hadith* from the Prophet (S) or an Imam, he has to be able to rely on the Infallibles (‘a) according to a certain credible religious proof or evidence. It is quite obvious that the proper way of narrating *hadith* requires expertise, which is not in the fields of medicine, engineering, computer science, and other sciences. It has to be in Islamic jurisprudence [*fiqh*] and no one has such an expertise except the *faqih*. Thus, what is meant by “those who relate from us” is in reality the *fuqaha* and religious scholars [*‘ulama*].

In view of our explanation of the two phrases, “*al-hawadith al-waqi‘ah*” and “*ruwatu hadithuna*”, it is clear that the meaning of the signed decree of the Imam of the Age (‘a) is: “Regarding the social problems and events that the Muslim community faces during the period of my occultation, turn for

guidance to the *fuqaha* and religious scholars because they are my argument against you and I am Allah's argument against them." Such a statement is a solid evidence for *wilayat al-faqih* during the period of occultation.

2. The other *hadith* that may be cited for proving *wilayat al-faqih* is a *hadith* known as the *maqbulah* of 'Umar ibn Hanzalah. In this *hadith*, stating the duty of the people concerning solving disputes and turning for guidance to a competent authority who rules over the Muslims, Imam as-Sadiq ('a) says:

مَنْ كَانَ مِنْكُمْ قَدْ رَوَى حَدِيثَنَا وَنَظَرَ فِي حَالِنَا وَحَرَامِنَا وَعَرَفَ أَحْكَامَنَا
فَلْيَرْضُوا بِهِ حَكْمًا فَإِنِّي قَدْ جَعَلْتُهُ عَلَيْكُمْ حَاكِمًا فَإِذَا حَكَمَ بِحُكْمِنَا فَلَمْ يَقْبَلْهُ مِنْهُ
فَإِنَّمَا اسْتَخَفَّ بِحُكْمِ اللَّهِ وَ عَلَيْنَا رَدُّ وَ الرَّادُّ عَلَيْنَا كَالرَّادِّ عَلَى حَدِّ الشِّرْكِ بِاللَّهِ.

"If there is a person among you who narrates from us, is versed in the lawful and the unlawful, and is well acquainted with our laws and ordinances, accept him as judge and arbiter, for I have appointed him as a ruler over you. So, if he rules according to our law and you reject his ruling, you will belittle Allah's law and oppose us, and to oppose us means to oppose Allah, and opposing Him is tantamount to associating partners with Him."¹⁴

It is obvious that the expression, "who narrates from us, is versed in the lawful and the unlawful, and is well acquainted with our laws and ordinances" applies to anybody except the *faqih* and *mujtahid* who is well-versed in religious laws and issues, and the Imam ('a) definitely means the *fuqaha* and religious scholars whom he has assigned as rulers over the people and regarded the ruling of the *faqih* like his ruling.

And it is crystal clear that obedience to the decree of the infallible Imam ('a) is obligatory and mandatory. As such, to obey the decree of the *faqih* is obligatory and mandatory, too. As stated by the Imam ('a), the rejection of the ruling of the *faqih* is tantamount to the rejection of the ruling of the infallible Imam ('a) and ignoring his command, which is a major and unforgivable sin because it is an open rejection of the legislative sovereignty of God, the Exalted, according to the said *hadith*, it corresponds to polytheism [*shirk*], i.e. associating partners with Him. The Holy Qur'an says:

"Polytheism is indeed a great injustice"¹⁵ and ***"Indeed Allah does not forgive that any partner should be ascribed to Him, but He forgives anything besides that to whomever He wishes."***¹⁶

Thus, defiance of the rule of *faqih* and rejection of his command is such a grave injustice and dreadful sin that it is not forgiven by God.

The criticism usually made against this way of understanding the mentioned *hadith* is that this narration of the Imam ('a) was only a reply to a question about the legal disputes and conflicts among the Shi'ah

and the narrator wanted to say: “What is our duty? Shall we refer to the judicial organization and courts of the usurping ‘Abbasid government or not?” And so what the Imam said was a reply to these questions.

The *maqbulah* of ‘Umar ibn Hanzalah is, in fact, concerned with the implementation of juridical laws in Islam which forms part of the governmental issues while *wilayat al-faqih* is related to the entire affairs of government and implementation of all Islamic laws and the rule of the *faqih* over the entire affairs of Islamic society. So, even if we accept this narration and do not argue against its chain of transmission, the only thing which it suggests is that the *faqih* has the authority and right to manage judicial affairs and that is all.

In reply to this criticism, two things can be considered: *firstly*, it is true that the inquiry of the narrator is about a particular case (judicial issue), but it is quite common in Islamic jurisprudence that the particularity of the question does not always necessitate giving a reply that will be on specific case and cover no other cases. In fact, it is possible that a general reply is given to a question which is concerned with a certain case.

For instance, we have many narrations about prayer in which the narrator asks about the case of a man to whom such-and-such happens while praying. Regarding these narrations, no *faqih* has said or says that the reply given by any infallible Imam (‘a) to such questions is a ruling pertaining only to the case of the man praying and that if the same thing exactly happens to a woman praying no ruling for the case of the mentioned woman can be drawn from the narrations and we have to look for it in other narrations.

Concerning this type of narrations, the *fuqaha* see that although the question being posed is about a specific case, i.e. a man praying, the ruling [*hukm*] of the Imam (‘a) in reply to the question is applicable to every person praying, male or female.

Secondly, in the *maqbulah* of ‘Umar ibn Hanzalah Imam as-Sadiq (‘a) said: “I have appointed such a person (i.e. who narrates from us, is versed in the lawful and the unlawful and is well acquainted with our laws) as a ruler [*hakim*] over you” and not “I have appointed him as a judge [*qaḍī*] over you.” There is difference between saying “I have appointed him as *hakim* over you” and “I have appointed him as *qaḍī* over you”. The general meaning of the word *hakim* encompasses all the affairs of governance and rule.

In any case, in view of the intellectual and transmitted proofs, some examples of which have been mentioned, in our view there is no more doubt about the idea that during the period of occultation of the infallible Imam (‘a), it is only the duly competent jurist [*faqih jami‘ ash-sharayit*] who has been granted the right and permission by God, the Exalted, and the infallible Imam (‘a) to govern and rule, and to exercise authority.

So, any government, at the top of which is someone other than *faqih* and is managed without the permission and supervision of *faqih* is a government of the *taghut* wherever it is and whoever its ruler is, and to support such a government is sinful and unlawful. Also, if the duly competent *faqih* was a person

of authority and the situation was conducive so that this ruler could establish a government, according to the proofs we have stated, obedience to him is obligatory and opposing his rule is unlawful because the Imam of the Age (‘a) said: “He is my argument against you” and “So, whoever rejects his ruling belittles Allah’s ruling and opposes us.” Similarly, if the Commander of the Faithful (‘a) appointed someone as the governor of a region, it was incumbent upon the people to obey the appointed person and opposing that governor would be tantamount to opposing the Commander of the Faithful (‘a).

When, for example, the Imam appointed Malik al-Ashtar¹⁷ as the governor of Egypt, nobody had the right to defy Malik’s order and say: “I know that ‘Ali (‘a) has designated Malik and appointed him as a governor, but since, for example, Malik is not infallible and identical to ‘Ali, I do not need to obey him, even though his orders and the laws enacted by him come within his jurisdiction, and it is not wrong from the perspective of religious law to behave like that.”

It is obvious that such an argument and statement is invalid and unsound for it is impossible to oppose Malik al-Ashtar who had been designated by ‘Ali (‘a). The purport of the stated proofs is that in these days the *faqih* is considered representative and deputy of God and the Imam of the Age (‘a), and as stated by the Imam (‘a) himself, to oppose the *faqih* is religiously impermissible.

1. *Sūrah al-Ahzāb* 33:6.

2. *Khums*: literally means one-fifth. According to the Shī‘ah school of jurisprudence [fiqh], this one-fifth tax is obligatorily levied on every adult Muslim who is financially secure and has surplus in his income out of annual savings, net commercial profits, and all movable and immovable properties which are not commensurable with the needs and social standing of the person. *Khums* is divided into two equal parts: the Share of the Imām [sahm al-Imām] and the Share of the Sayyids/Sādāt (descendants of the Prophet) [sahm as-Sādāt]. Accordingly, the Share of the Imām is to be paid to the living Imām, and in the period of occultation [a‘r al-ghaybah], to the most learned living mujtahid who is the giver’s marja‘ at-taqlīd [Source of Emulation]. The other half of the *khums*, the Share of the Sayyids/Sādāt, is to be given to needy pious Sayyids who do not have financial resources to lead a respectable living. For more information, see Sayyid Muhammad Rizvi, *Khums: An Islamic Tax*, <http://www.al-islam.org/beliefs/practices/khums.html> [1]. [Trans.]

3. *Zakāt*: the tax levied on various kinds of wealth and spent according to the injunctions specified in *Sūrah at-Tawbah* 9:60. [Trans.]

4. *Āyatullah Mīrzā Ḥasan Shīrāzī* (d. 1312 AH/1894): the mujtahid who declared in December 1891 that “the use of tobacco is unlawful [ḥarām] and tantamount to war against the Imām of the Age (‘a)” after the production and marketing of tobacco in Iran had been made the monopoly of a British company. In response to his declaration, all of Iran boycotted tobacco, forcing the cancellation of the concession in early 1892. See Hamid Algar, *Religion and State in Iran in 1785–1906: The Role of the Ulama in the Qajar Period* (Berkeley and Los Angeles: University of California Press, 1969), pp. 205–215; Nikki Keddie, *Religion and Rebellion in Iran: The Tobacco Protest of 1891–92* (London: Frank Cass, 1966). [Trans.]

5. *Nahj al-Balāghah*, Sermon 40.

6. *Sūrah al-Baqarah* 2:85.

7. *Maqbūlah*: a ḥadīth to which one may make acceptable reference. [Trans.]

8. *Abū Khadijah*, one of the trusted companions of Imām aḥ-ḥadiq (‘a), relates: “I was commanded by the Imām (‘a) to convey the following message to our friends (i.e., the Shī‘ah): ‘When enmity and dispute arise among you, or you disagree concerning the receipt or payment of a sum of money, be sure not to refer the matter to one of these malefactors for judgment. Designate as judge and arbiter someone from among you who is acquainted with our injunctions concerning what is permitted and what is prohibited, for I appoint such a man as judge over you. Do not submit the complaint you have

against one another to the tyrannical ruling power.’ ” Wasʿil ash-Shʿah, vol. 18, p. 100. [Trans.]

9. Shaykh aʿ-ʿadq: also known as Ibn Babʿyah, one of the most important of the early Shʿah scholars who died in 381 AH/991 CE. For having an idea about the biography and works of Shaykh aʿ-ʿadq, see the introduction to Shaykh aʿ-ʿadq, Iʿtiqādītu ʿl-Imāmiyyah: A Shʿite Creed, 3rd ed., trans. Asaf A. A. Fyzee (Tehran: World Organization for Islamic Services, 1999), pp. 6–23. [Trans.]

10. Ikm ad-Dʿn: in full, Ikm ad-Dʿn wa ltm an-Niʿmah is a work by Shaykh aʿ-ʿadq on the occultation [ghaybah] of the Im of the Age (ʿa). [Trans.]

11. Ikm ad-Dʿn wa ltm an-Niʿmah, vol. 1, p. 483.

12. Us al-Kʿf is the first of the three sections of Al-Kʿf, one of the most important Shʿah collections of hadith compiled by Shaykh Ab Jaʿfar Muhammad ibn Yaʿq b ibn Isʿaq al-Kulayn (d. 941 CE). It covers ideological and ethical matters and consists of the books of Reason and Ignorance; the Excellence of Knowledge; Divine Unity; Divine Proof; Belief; Unbelief; the Qurʿan; and Supplications. [Trans.]

13. The book Wasʿil ash-Shʿah compiled by Shaykh Muhammad ibn ʿasan al-ʿurr al-ʿmil (d. 1693 CE) is one of the best collections of traditions [hadiths] ever compiled in recent centuries. It includes traditions from the Prophet of Islam and the Imms which are quoted in the Four Books [kutub al-arbaʿah] and in many other hadith collections. It comprises more than fifty-one sections ranging from Kit b at-Tʿahʿrah to Kit b ad-Diyʿt and provides a comprehensive review of issues on Islamic jurisprudence, laws, ethics and the practices of the Jaʿfar school of thought. [Trans.]

14. Us al-Kʿf, vol. 1, p. 67; Wasʿil ash-Shʿah, vol. 18, 98.

15. Sʿrah Luqmʿn 31:13.

16. Sʿrah an-Nisʿ 4:48.

17. Mʿlik al-Ashtar: more fully, Mʿlik ibn Hʿrith from Nakhaʿ known as al-Ashtar, was among the prominent commanders of Im ʿAlī’s army and the one whom Im ʿAlī (ʿa) appointed as the governor of Egypt. He accompanied the Im in the Battles of Jamal and Siffʿn. On his way to Egypt, he was killed by Muʿwiyah through conspiracy. For further details about the account of the Im’s famous instructions to him before his setting forth to Egypt, see Nahj al-Balaghah, Letter 53. A complete translation is contained in William C. Chittick, A Shʿite Anthology (Albany, N.Y., 1980), pp. 68–82. [Trans.]

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