

A Glance at the Fundamentals of the Trusteeship of the Jurisprudent (*Wilayat al-Faqih*)^{*}

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REGARDING the worship of men, what is understood from the Qur’ān is that the most perfect and outstanding attribute for man is to be the servant of God, because the perfection of every creature is to move on the basis of its own genetic system. And since he himself is not fully aware of this route and its aim, God should guide him and clarify the reality of man and the universe and the mutual relation of man and the universe. The relationship of man with all the phenomena from the one hand and his ignorance to the quality of these relations from the other hand, specify the necessity of a guide that is an absolute knowing.

If man distinguishes this route properly, in other words, if he is the servant of God and accepts His Lordship and His Awareness, then he will attain the best perfection.

Therefore, the most important perfection that God propounds in the Qur’ān is ‘*ubudiyyah* meaning “slavehood”.

“All praise is God’s, Who sent down upon His servant the Book (Qur’ān)...”

—XVIII, 1

Just as *isra’* and ascension (*‘uruj*) are based on *‘uboudiyah*, the revelation of the Divine Book and its descent are on the basis of *‘uboudiyah*.

The man should fly from the platform of *‘uboudiyah* if he wants to have *isra’* or ascension (*mi‘raj*) and likes/wills that his heart becomes the place of the descent of revelation.

The verses “Glory be to Him Who carried His servant (*Apostle Muhammad*) by night...” (Quran, XVII, 1) and “Then revealed He unto His servant what He did reveal.” (Quran: LIII, 10), and the verse “All praise is God’s’ Who sent down upon His servant the Book (*the Qur’an*)...” (Quran: XVIII, 1) all are on the basis of *‘uboudiyah*.

This fact is not special for the religious sciences [/knowledge of the religion] and the eternal sciences, but also the people who have *wilayee* knowledge and rule of the basis of inwardness guide the others, they too have attained this position on the basis of *‘uboudiyah*.

While mentioning the story of Khidr (the prophet), Allah the Exhaled says: “Then found they one, from among Our servants...” (Quran, XVIII, 65).

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Moses, the Interlocutor of Allah had already been appointed to benefit from one of special servants of Allah that has taken some advantage of intuitive knowledge (*`ilm ladunni*). So both Khidr and the Holy Prophet [of Islam] have attained this position through *`uboudiyah* and Allah's Favor.

The next point is that in order to attain the state of prophecy, caliphate, Imamate and similar states, *`uboudiyah* is the essential although not sufficient condition, whereas the Divine Favor and Grace and Allah's knowledge to the futurity, all have efficient roles.

It is not true that if a person becomes a perfect servant of Allah, he will become a prophet or an Imam. However, he will become a friend (*waliyy*) of Allah and not his prophet or messenger, since "God knoweth best where to place His apostleship" (Quran: VI, 124). Furthermore the man himself should possess the perfection of *`uboudiyah*.

At times Allah grants the knowledge, spirituality and even greatness to some people but none of them are used properly. As the holy verse "Relate unto them the news of him whom We gave Our signs, but he withdrew (*himself*) from them..." (Quran: VII, 175) indicates, Allah grants the vital/key positions such as prophecy, caliphate, Imamate and so on to particular individuals but it is possible that He grants some greatness, intuitions and spiritual knowledge to other people as tentative positions, because the human perfection is through *`uboudiyah* and it is exclusively for Allah [/just Allah deserves it (*`uboudiyah*)]. "And commanded thy Lord hath that thou shalt worship not (*any one*) but Him,..." (Quran: XVII, 23) that indicates that nobody deserves to be worshiped and worshipping other than Allah is not permissible.

Guardianship of the Saints

If it is proved that the perfection of man is amidst servanthship, and man is exclusively a servant of Allah, so whosoever other than Allah cannot be the real guardian of anybody so that we could say that God is the genuine guardian. And whosoever other than Him, like the prophets and saints are subordinate guardians.

After it became clear that the guardianship of the prophets and saints is not genuine, the guardianship of jurisconsult (*wilayat al-faqih*) becomes clear and many doubts will be solved.

It is important to make it clear that how many real guardians in a linear sequence there are for man.

Consider the guardianship of a father or a grandfather upon the interdicted child. Either of them who executes the guardianship, there will be no opportunities for guardianship of the latter. Is the guardianship upon the society of this kind/category? Or is it in a linear sequence?

The intellectual argument that is confirmed by Quranic verses necessitates that the perfection of man is to submit/obey one who is aware of the reality of the man and the

universe and the mutual relation/... between them. He is nobody but Allah; therefore, the worship and guardianship are exclusively for Him, that is the only guardian of man is Allah.

So it cannot be true that the man has many guardians some of them are genuine and the others are subordinate, in other words, some are close guardians and some are far ones, rather the man has one real guardian that is Allah.

Considering the lifestyle of the prophets, their most elegant courtesy is the monotheist courtesy. All their acts are based on this verse: “ Verily my prayer and my sacrifice, my life and my death, (*are all, only*) for God, the Lord of the worlds.” (Quran: VI, 162). Although this verse addresses the Holy Prophet, however, the life and death of all the prophets and the Infallible are for the sake of Allah.

While the Holy Quran ascribes the power, strength, glory/honor, bread and some other affairs to other than Allah, it concludes that these are exclusively for Allah.

Regarding glory/honor Allah bid: “But for God is all honor and for His Apostle and for the believers...” (Quran: LXIII, 8) At the same time in another surah He bid: “God’s (*alone*) is all honor...” (Quran: XXXV, 10). Concerning ‘power/might’ bid: “ (*The Lord said unto Zachariah’s son*) O’ Yahya! Hold thou the Book fast!” (Quran: XIX, 12). And addressed the children of Israel: “Hold ye fast that which We have bestowed upon you with the strength (*of determination*) ...” (Quran: II, 63) and addressed the Muslim combatants: but at the same time then bid: “And prepare ye against them wgatever (*force*) ye can...” (Quran: VIII, 60).

Then Allah bid: “...Unto God belongeth all power...” (Quran: II, 165)

Another instance is ‘sustenance/bread’. Allah is introduced as ‘the Best Provider’, that indicates that there are some other providers but Allah is the best of them. However, in another verse Allah bid: “Verily, God He (*alone*) is the Bestower of sustenance, the Lord of unbreakable strength.” (Quran: LI, 58) According to Arabic rhetoric in indicates that God is the only provider.

Regarding intercession (*shafa`ah*), a number of intercessors are recognized in the Holy Quran as God says: “” It is denoted that there are many intercessors, however, in other verses emphasizes that the genuine intercession is only for God “Who is he that can intercede with Him but with His permission?” (Quran: II, 255).

It is true for guardianship. In surah *Ma’idah* God says: “Verily, your guardian is (*none else but*) God and His Apostle (*Muhammad*) and those who believe, - those who establish prayer and pay the poor-rate, while they be (*even*) bowing down (*in prayer*).” (Quran: V, 57). In this verse by assistance of the traditions the guardianship is proved for the Holy Prophet and the members of his household (*Ahl al-Bayt*). The issue is even clearer in surah *Ahzab* in which God says: “The Prophet (*Muhammad*) hath a greater claim on the believers than they have on their own selves” (Quran: XXXIII, 6). The guardianship of the Holy Prophet upon the lives and the properties of the individuals is higher than /prior to their own selves. That is why God says in surah *Ahzab*: “And it is not for a believer man or woman to have any choice in their affair when God and His Apostle have decided a matter...” (Quran: XXXIII, 36). Despite these three verses God underscores in another surah that guardianship is exclusively for God: “Or have they taken besides Him guardians? But God, He is the Guardian...” (Quran: XLII, 9).

This indicates that the guardianship of the apostle, the Infallible and the saints are not equal to that of Allah. And since the guardianship is exclusively for Him,

His guardianship cannot be an intermediary of affirmation of the guardianship for anybody except Allah.

As a [philosophical] example, if water is placed beside fire, it really gets warm. This nearness to fire is an intermediary for getting water warm. In this state the qualification of water to warmth is a real qualification, and this nearness to fire is an intermediary in affirmation and not in occurrence. But consider the same fire placed in front of a mirror. In the mirror you can see the flames of fire rising but it is only the reflection of fire, so the mirror does not get warm due to the flames reflected therein.

The verses * and * do not mean that the Glory of God is an intermediary for affirmation of glory for the Holy Prophet and the saints. Otherwise the Glory of God will become limited, because if a number of glories exist, then none of them can be unlimited. The infinite leaves no opportunities for another individual however limited, rather the Glory of God becomes the intermediary for occurrence of glory for them. The Holy Quran has an elegant term/statement in this regard that is that these are signs and tokens/symbols of God, namely if a believer is glorious, he is a sign and token/symbol of God's Glory. Also if the Holy Prophet is a guardian, his guardianship is a symbol of God's Guardianship. The saints of God are symbols of the Divine Guardianship, and they demonstrate the Divine Attributes, while others are dark and obscure and do not indicate the nominal, attributive or actual perfection.

Allamah Tabataba'i, our teacher said frequently: "This fact that the religion has declared that there is no creature in no conditions that is not the symbol/token of God, is an elegant expression. Because, if it is a symbol of God, then it is not independent, since if it was independent, then it could not reflect/manifest God.

Therefore, * and * are essentially (*bi al-dhat*), then * is accidental (*bi al-'arad*). By this explanation the interpretation of the verses *, * and * becomes clear.

Allah, the Exalted, asked Moses, the interlocutor:

"Why didn't you visit me when I was sick?"

Moses answered: "But You never become sick."

"That believer servant that was sick is my manifestation (incarnates Me). If you respected him, you would respect Me."

These are not allusion, trope/allegory, metaphor and simile, rather they indicate seeing God reflected in the mirror of [the heart of] a believer. Then one understands that the others (other than Allah) are nothing, and Allah has not ** in anybody. The same as fire flame or sunshine that do not ** in the mirror, and do not unite with it. Thus the ** and the unification are impossible.

By the assistance of such a sight the divine guardian knows his position properly and is aware of being the creatures symbols/tokens [of God].

Guardianship upon the Elite

The guardianship of the Prophet and the Imam upon the society is not such as the guardianship upon the fool, the madman, and the interdicted persons.

Otherwise it is counted a contempt/disgrace to the people and a desecration to the guardianship of the jurisconsult.

He who undertakes the guardianship upon a madman, a fool or a young child, organizes/administrates them according to his own thought and opinions. So regarding

playing, entertainment, sleeping, feeding and other affairs he treats according to his own desire and will. This is the indication of the guardianship upon the interdicted. However the guardianship of the Prophet, the Imam and his successor is not of this kind, rather their guardianship refers to that of Allah, that is the religion and its school themselves undertake the leadership and guardianship of the society. The reason is that whereas the people are under guardianship of the religion, the real personality of the Prophet and other infallible persons is under the guardianship of the religion and their legal personality.

For the Infallible - from the aspect that they are infallible – have nothing except from Allah. [For instance] if the Holy Prophet as a trustee of the divine revelation receives a verdict of *fatwa* from Allah and announces it to the people, it is obligatory for all, including the Prophet to act according to such a fatwa.

For instance, Allah has bidden: “They ask thee for a decree (*about the Law*): Say, (*O’ Our Apostle Muhammad!*) God giveth you a decision...”(Quran: IV, 176) “This is Allah’s fatwa. Narrate it to the people.” Once this fatwa is announced to the people by the Prophet, it will become obligatory for all, even the Prophet, to act accordingly.

Another example is about the guardianship verdicts such as coming to a rupture with a certain tribe, or expelling/banishing, the Jews for instance from the city. So submitting such an injunction is obligatory and therefore, violating it is forbidden even for the Prophet.

It is also true for the judges. For instance, when two hostile parties attended the law court of the Holy Prophet, and he judged about them, once the judgement is finished and the verdict is issued, then violating that verdict is forbidden and therefore, following it is compulsory even for the Prophet. So there is no privilege for the Prophet in this regard. After the Prophet, the same is true for the Infallible Imam, and if he has a special deputy such as Malik Ashtar (Imam Ali’s companion) and Muslim ibn `Aqil (Imam Husayn’s deputy) the same position is true for them.

In case there is no special deputies, the same position is true for the general deputy (*na’ib `amm*).

Did the late Imam Khomeini have any [special] privilege to the Iranian nation in this regard? Whenever he issued a fatwa, it was obligatory even for Imam Khomeini himself to act accordingly. Or when he judged that the Israeli embassy should be wound up/closed, it was compulsory for all, including he himself to follow this judgement. Since he has no personal privilege in this regard, nobody can object that accepting the guardianship of the jurisconsult means that Iranian nation, for instance, are interdicted!

It has become clear that the guardianship of the jurisconsult is not of the kind of the guardianship upon the madmen or the interdicted, rather it is the guardianship of the school [of thought] (religion) guardian of which is an infallible person or his just deputy. The Prophet himself is under the guardianship of the school, in the other words, the real personality of the Prophet, the Imams or other individuals are the subset of the guarded, and his legal personality is the guardian.

Now that the meaning of guardian (*waliyy*) became clear, no harm would occur for the monotheism, that is accepting the guardianship of the saints becomes equal to monotheism. Because according to the verse: “But God, He is the Guardian...” (Quran: XLII, 9) the individuals in the society are the servants of Allah, and He is their real

Guardian, while the saints are His symbols and tokens. Like a mirror that reflects the Guardianship of Allah and not like boiling water, for instance that got hot due to the fire. In this state one takes pride in the guardianship, for he is under the guardianship of Allah. As an example, take a tree. It needs suitable water and air to grow. These two are of vital importance. The role of guardianship upon the society is like that of water and air for a tree. If one likes to become the blessed tree of *Touba*, he should follow this way.

The late Imam Khomeini emphasized: "Support the guardianship of the jurisconsult so that your country remain secure." The reason was that the tree of humanity should grow in good conditions. Necessarily an expert in Islam who believes in it should take the reins of government so that when he issues an injunction, before the others he acts himself accordingly. This is the meaning of the guardianship of the jurisconsult that returns to the guardianship of jurisprudence and justice. Otherwise nobody has guardianship upon the others.

In the guardianship of a father upon his son the father is not obliged to act according to his order before his son, and subsequently the son cannot object why his father did not act accordingly first. While in the guardianship of the jurisconsult if he do not follow his order before the others, the nation has the right and option to object him.

Imam Ali, the master of the believers, said: "We never ordered you to do a certain duty unless we excelled you to act accordingly." The message of prophet *Shu'ayb* (Jethro) in the Holy Quran is: "I desire not that in opposition to you I betake myself unto that which I forbid you from it..." (Quran: XI, 88)

It has become clear [through the past discussions] that if the guardianship of the Prophet and Imams is for the sake of their real and not legal personality, thus the guardianship of the just jurisconsults too, is considering their legal personality that is jurisprudence and justice. So nobody can cheat the people that if they accept the guardianship of the jurisconsult it means the [recognition] that they are interdicted. Because the people are intelligent and understand whether this guardianship is that of upon the interdicted or that of upon the free human beings.

Genetic and Legislative Guardianship

Guardianship is divided in two kinds: genetic (*takwini*) and legislative (*tashri'i*). As examples of the first kind, Allah is the guardian of man and universe. The human self has guardianship upon its inner powers/faculties and also upon every kind of application of the imaginative and imaginary faculties, as well as upon its healthy members/parts of body. Once the self orders to see or to hear, the eye and the ear will submit provided the member is not paralyzed or maimed.

This kind of *wilayah* returns to cause and effect. Each cause is the *wali* of the effect, and every effect is under guardianship of a cause. The causality of the cause is either as reality or as a manifestation of the real cause. If the causality of a thing is real, its *wilayah* will be real, too, and if its causality is a manifestation of the real cause, its *wilayah* too will be a manifestation of the real *wilayah*.

Legislative guardianship means that one person is the guardian of the others according to law. A part of this kind of guardianships refers to jurisprudential issues, another part returns to the ethical affairs, while the rest refer to the theological issues.

In the genetic guardianship it is impossible to violate. For instance, once the self has determined to imagine an image in the mind, it will be drawn in the mind instantly

If man wills to bring, for instance, the holy shrine of Imam Riza in his mind, once he wills, the imaginary image of that place will come to his mind. It is not true that if one's internal system/organ is healthy, in case he wills a matter, the system does not submit. Or he wills to see a place but will not be able to. So, in case the member/body part the member is not paralyzed or maimed, then it would be under the protection/guardianship (*wilayah*) of the self, while the self is the protector/guardian (*wali*) of the healthy member.

However, the matter is different in the legislative kind of *wilayah*, since this kind may be violated. In the other words the man can follow or violate a law and an ordinance related to responsibility (*taklif*), because he is free, and this freedom is a matter of his perfection. A part of the legislative *wilayah* is discussed under the topic of 'Interdiction' (*hajr*), where certain individual are interdicted due to immaturity, foolishness, madness, and bankruptcy. And subsequently a guardian will be determined for them.

In some cases a guardian and supervisor is needed because of the death. For instance, a deceased person needs a guardian (*wali*), and his heirs are prior to the other to be his *wali* concerning the funeral rituals. Another instance is the killed person, so that his heirs have guardianship upon his blood (to take revenge). This is the jurisprudential kind of *wilayah* that is discussed in different chapters of jurisprudence such as Purity (*taharah*), Punishments (*hudoud*), and Blood-money (*diyah*). But the legislative *wilayah* that is discussed under the topic of *wilayat-e faqih* is loftier than these issues. It is not of the type of *wilayah* that is discussed in such different jurisprudential parts of Interdiction (*hajr*), Purity (*taharah*), Blood vengeance (*qisas*), and Blood-money (*diyah*).

The Islamic community neither is deceased person nor an immature, a fool, a madman, and a bankrupted to require a wali.

All the attacks and the criticisms of both the local and abroad writers against *wilayat-e faqih* are initiated from this misunderstanding that they deem it is of the *wilayah* discussed in the jurisprudence under the title of Interdiction, while it is not relevant to it at all, rather it means supervision and protection.

The holy verse : "Verily, your guardian is (*none else but*) *Allah* and His Apostle (*Muhammad*) and those who believe, - those who establish prayer and pay the poor-rate, while they be (*even*) bowing down (*in prayer*)."

 (Quran: V, 57) addresses the wise and responsible persons and not the irresponsible or the interdicted.

Allah, the Exalted, never addresses the interdicted, the madmen, the immature and the bankrupts by the holy verse "The Prophet (Muhammad) hath a greater claim on the believers that they have on their own selves ..." (Quran: XXXIII, 6), or the verse: V, 57, or the verse "O' ye who believe! Obey *Allah* and obey the Apostle and those vested with authority from among you" (Quran: IV, 59). The meaning of this *wilayah* is to supervision and administration to which refers the essence of *wilayah* related to the legal personality of the wali and not his real personality.

It means that when Imam Ali, the Commander of the Faithful writes in his letters that this is a message you receive from your wali. Imam Ali from the aspect that he is the son of Abu Talib, is the same as other individuals and locates under the *wilayah* of his own Imamate. Because of he wants to issue a fatwa, it is obligatory even for him to act according to his fatwa. And when he issues a verdict of judgment, he is not permitted to

violate it, and should act accordingly. And when he rules as a ruler, even he himself should follow it and cannot violate.

Therefore, it has been made clear that Imam Ali is under *wilayah* considering his real personality, and is the wali, and the Commander of the Faithful considering the fact that he has received this post denoted by the holy verse (Quran: XXXIII, 6) due to the Event of Ghadir and the like.

Position of *wilayah* in Theological Discussions

One can discuss on *wilayat-e faqih* from two aspects: jurisprudential and theological.

The first one is that in case such a law exists, is it obligatory to act accordingly? This is a matter propounded by a jurispudent that is the submission compulsory for us and consequently is the disobedience forbidden? Do some of the individuals of the Islamic community have the right to take the reins of government, and is it permissible for them?

These two issues are jurisprudential. In the other words, whatever is propounded regarding the ruler (*waali*) from the aspect that he is responsible (*mukallaf*), and any issue subject of which is the act of responsible (person), are jurisprudential. Is it obligatory for the people to obey the *waali* from the aspect that they (people) are mature, wise, intellectual, erudite and responsible? The answer to this question, whatever it could be (positive or negative), is a jurisprudential answer.

But the theological approach to *wilayat-e faqih* is that: Has Allah issued any commandments regarding the occultation period?

The subject of such discussion is Allah's Act and necessarily the act of the responsible.

If Allah has ordered, its submission is obligatory both for the ruler (*waali*) and the people. Because Ali, the commander of the faithful, said:

" If people had not come to me and supporters had not exhausted the argument ..." (Nahj al-Balaghah, sermon 3). If those who gave alliance and also the companions were not available, argument (*hujjat*) would not be perfect for me and subsequently I would not accept it.

The reason is that propounding a jurisprudential discussion, for instance, if we proved in jurisprudence that it is obligatory for people to submit the *wali-ye faqih*, or if we prove that a full authority jurispudent has such a right, duty or responsibility, although it is a jurisprudential issue, necessitates the fact that Allah has commanded such a way. Because unless Allah has issued such a commandment neither the jurispudent nor the people become responsible.

So it has become clear that as a formula, if the subject of a discussion is Allah's Act, then this discussion is a theological one, while if the subject is the act of responsible (person), then the discussion is a jurisprudential one.

The reason that Imamate is one of the parts of the principles of our branch of Islam (Shi'ism) while the Sunni branch does not recognize it as a principle of the religion, is that the Sunni branch holds that it is not obligatory for Allah and the Prophet, and Allah has not given any commandments regarding the leadership of the *Ummah*. It is people that should elect a leader. So Imamate is their attitude is an application like other jurisprudential applications.

But in our attitude we hold that this task is an Act of Allah, for we believe in infallibility. So we hold that Allah has commanded his Prophet to introduce Ali as his successor.

Now the discussion has reached this point that Allah is aware of all corpuscles of the universe, ("And doth not concealed from thy Lord (even) the weight of an atom in the earth nor in the heaven, ..." Quran, X: 61), He knows that His Infallible Saints (*awliya'*) are present for a limited period and the last Infallible Saint (that is Imam Mahdi) will be under occultation for a long period. Has Allah issued any commandments/instructions/injunctions for occultation period, or has abandoned the nation (*Ummah*)? This is a theological discussion.

If the Islamic thinkers have propounded *wilayat-e faqih* doctrine as a theological discussions, is based on this fact and not because they believe it as the rank of prophecy or Oneness of Allah. Then, every discussion object of which is Allah's Act, is theological but the reverse is not true (It is not true that each theological discussion is a part of the principles of the religion).

Guardianship in the Traditions (*ahadith*)

One of the definitions of *wilayah* is to supervise (as a guardian) and administrate the society. In addition to the Holy Quran, in the traditions transmitted to us from the Infallible the very same meaning has been applied. We mention some of these traditions below as examples:

1. Imam Ali has used this meaning for *wilayah* (that is guardianship and administration) in different phrases of Nahj al-Balaghah, for instance:

A. In Sermon 2 after describing the members of the Prophet's household (Ahl al-Bayt) as: " They are the trustees of His secrets, shelter for His affairs, source of knowledge about Him, center of His wisdom, valleys for His books and mountains of His religion. With them Allah straightened the bend of His religion's back and removed the trembling of its limbs." then says that by the Ahl al-Bayt -that are the basis of the religion- many problems are solved. "They possess the chief characteristics for vicegerency (*khalafah*). In their favor exists the will and succession (of the Prophet)." Exclusion of the *wilayah* is due to these facts.

This statement is frequently used by Imam Ali in the sermons of Nahj al-Balaghah whenever he introduces himself to the public as *waali* and wali, and states that he has the right of *wilayah* upon them and they are under his *wilayah*. This does not mean that Imam is the guardian of the people and the people are interdicted.

B. In Sermon 216 delivered at the Battle of *Siffin*, Imam said: "So now, Allah the Glorified, has, by placing me over your affairs, created my rights over you," In the same sermon in the paragraphs 6 and 7 is mentioned: "The greatest of these rights that Allah, the Glorified, has made it obligatory, is the right of the ruler over the ruled and the right of the ruled over the ruler ... Consequently, the ruled cannot prosper unless the rulers are sound, while the rulers cannot be sound unless the ruled are steadfast." . Here the *walis* and the *wilayah* or the *waalis* (rulers) regarding guardianship (administrating) the society is intended.

C. (Nahj al-Balaghah, letter 42)

When Imam Ali decided to set out towards the enemies, wrote a letter addressing `Umar ibn Abu Salamah Makhzoumi, the governor of Bahrain and summoned him to the capital. Replacing him with another person Imam explained: "The reason that I have recalled you

and sent another person instead of you is not because you managed there improperly, rather since I am in an important travel, you can assist me in the military tasks. As long as you were the ruler of Bahrain, you performed the right of the *wilayah* properly and perfectly." "... Therefore, proceed to me when you are neither suspected nor rebuked, neither blamed nor guilty. I have just intended to proceed towards the recalcitrant of Syria and desired that you should be with me because you are among those on whom I rely in fighting the enemy and erecting the pillars of religion, if Allah wills..."

In the Treaty of Malik Ashtar the Imam has frequently used the term *wilayah* in this definition (guardianship):

III. A. "... Because you are over them and your responsible Commander (Imam) is over you, while Allah is over him who has appointed you." (Nahj al-Balaghah, Letter 53, paragraph 4)

III. B. "... Because people do have shortcomings and the ruler is the most appropriate person to cover them. Do not disclose whatever of it is hidden from you..." (Nahj al-Balaghah, Letter 53, paragraph 8)

III. C. "... their good wishes prove correct only when they surround their commanders (to protect them). Do not regard their positions to be a burden over them." (Nahj al-Balaghah, Letter 53, paragraph 20)

3. Imam Muhammad Baqir said: "Islam is founded on five pillars: prayers (*salat*), *zakat*, hajj, fasting (*sawm*), and *wilayah*" (See: Wasa'il al-Shi'ah, volume one, p...).

This *wilayah* has three discussions two of which are jurisprudential that are located at the same level of fasting and hajj. But the third discussion is a theological one that may not lay at the level of these two.

If we observe that the Holy Prophet has allocated the *wilayah* for Imam Ali and has appointed him Imam and the Commander of the Faithful, just because Allah ordered him to do so (and to address people whosoever I am his *Mawla*, Ali is his *mawla* too), then this is a theological issue.

Now that the Prophet has announced this command in accordance with the holy verse "(O Our Apostle Muhammad!) Deliver thou what hath been sent down unto thee from thy Lord ... " Quran: V, 67), then it is obligatory for the Prophet, Imam Ali, the companions and other individuals to act accordingly. The Prophet cannot refrain to recognize Imam Ali as caliph, can he? He is also responsible, and therefore, it is obligatory for him, too. The holy verse " The Prophet believeth in what hath come down unto him from his Lord" (Quran: II, 285) indicates that the Prophet recognizes Ali as the caliph. This is a jurisprudential issue in which there is no difference between the Prophet and others, also between the Imam and his followers.

As a conclusion two aspects of the *wilayah* mentioned in this hadith are jurisprudential: firstly, it is obligatory for Imam Ali himself to accept this position, and secondly, it is obligatory for the community to accept Ali as their *waali*. The reason is that the subject of such issues is the act of the responsible (person).

But considering that Allah commanded His Prophet to announce the caliphate of Imam Ali, so its subject is the Act of Allah, and consequently is a theological issue.

4. Another tradition similar to this hadith was narrated by Hurayz from Zurarah, that Imam Muhammad Baqir said:

"Islam is founded on five pillars: prayers (*salat*), *zakat*, hajj, fasting (*sawm*), and *wilayah*." Zurarah asked the Imam: "Which one is the predominant?" The Imam answered: " *Wilayah* is." (Wasa'il al-Shi'ah, volume one, p. 40; Usoul al-Kafi, Vol. I, p. 462).

To justify their aloofness from the ruling and guardianship some people assume that *wilayah* means the belief in the Imamate of the Imams and the affection to this family. (As denotes the holy verse: "Say thou (*O' Our Apostle Muhammad*): " I demand not of you any recompense for it (*the toils of the Apostleship*), save the love of my relatives" Quran: XLII, 23) But Zurarah asked the Imam the predominant. After the Imam underscored *Wilayah* as the predominant, then added: "Because it acts as the key for them (i.e. the five pillars) and the *waali* is the guide towards them". It means the *waali* (namely the ruler) is discussed.

Thus, it has been clear that the *wilayah* means guardianship, a guardianship upon the elite and not upon the mad persons. If one analyzes properly, he will find out that the *waali* has both a real personality that is mukallaf to the divine commandments, at the same time he has a legal personality that is appointed (granted) by Allah. That real personality is the subset of the legal one. In this case there will not be any privileges for him. Which act has been obligatory for the Prophet but not for the community? Which sin is forbidden for the community and not for them (the prophets)? Which *fatwa* is obligatory for the community and not for them? Which judgment and *wilayee* verdict violating of which is forbidden for the community and not for them? So, it is clear that they are responsible persons (*mukallaf*) as we are. We can conclude that *wilayah* is a legislative (*tashri'i*) matter and it means to protect and supervise the wise human society.

The Role of the Assembly of Experts in the issues of *Wilayah*

Where is the position of the Assembly of Experts? This assembly specifies a full-authorized jurisprudent according to the constitution and then introduces him to the public. The people consider him as *wali* and not attorney. While the constitution was being edited for the first time, some members of the Assembly suggested the phrase "the people select him" but at the very place it was amended as "the people accept him". Some asked the difference between the two phrases, I replayed that to appoint an attorney (*tawkil*) differs from accepting the guardianship (*tawalli*).

The *wali* should possess some privileges that refer to his theoretical and practical theosophy. While he is *wali*, at the same time his is equal to the individuals in front of the law.

In fact this is his jurisprudence and justice that governs; but the issue that which person is the *wali*, is not a scientific issue, rather it is a matter of subject that must be recognized by the Assembly of the Experts.

It is probable that in your point of view a certain person is fully authorized while in my viewpoint another person is fully authorized.

The Necessity of a *wali* from the Intellectual point of view

In the recent discussion of Religion and Development, some have stated that there are no discussions of development, management and leadership in the religion; rather this is the

responsibility of science and wisdom. They assume that wisdom contradicts the religion, while the wisdom and the tradition act as the two eyes of the religion. All the books that deal with the principles of the jurisprudence (*usoul al-fiqh*) stipulate that the rich sources of the jurisprudence are the Book, Sunnah, consensus and wisdom. The consensus refers to the *Sunnah*, while the wisdom is independent. For instance, planning for the development and the improvement of the country, and also regulating the local and foreign policies if are done through the common sense and away from the carnal desires, then they are attributed to the religion. Since all matters and details have not been mentioned through traditions, then the other eye of the religion that is wisdom will complete it.

Their misunderstanding is that they have summarized the religion exclusively in the Holy Quran and the tradition, and hence have put the scientific management opposite to the jurisprudential one, and conclude that the religion is incomplete! While the religion recognizes whatever the wisdom finds out. As the traditional reason introduces some of the affairs as the inherent obligation and introduces some others as the prior obligation, the rational reason has the two kinds of obligations.

The issue of leadership and management of the community are a rational one. Let us suppose that a clear injunction had not come in the verses of Quran or the tradition, the common sense judges clearly, and this rational judgment is the Command of Allah.

All the jurisprudents that thought of the philosophy of jurisprudence have obviously understood the necessity of the "*waali*". In this regard one can refer to the statements of such great jurisprudents as Ayatollah Hasan Najafi (d 1900, the compiler of the book *Jawahir al-Kalam*) and Imam Khomeini.

While propounding the issue of war and enjoining right conduct and forbidding indecency in his great book *Jawahir al-Kalam*, Ayatollah Najafi said:

"This fact becomes clear by deliberation in the texts and observing the status of the Shiites specially the Shiite scholars.

The decree (*tawqi`*) of Imam Mahdi towards Shaykh Mufid declaring respect and honor for Mufid is a good instance. Had not there been the generality of *wilayah*, a great deal of the affairs respective to the Shiites would have remained idle. It is strange that somebody doubt to accept, as if they have not savored the taste of the jurisprudence at all!" (See: *Jawahir al-Kalam*, vol. 21, p 397)

What this honorable jurisprudent underscores on is an intellectual issue. After deliberating on a dense amount of commandments in different fields, he concluded that such great amount of commandments and orders definitely need an executer or an administrator otherwise, the affairs respective to the Shiites in the occultation period of Imam Mahdi would have remain idle. He finally reaches to this conclusion that whosoever ... in the issue of *wilayat-e faqih*, it seems as if he has not tasted the savor of the jurisprudence (*fiqh*) and has not found out the mystery of the words of the Infallible Imams (*a.s*).

He even has proceeded to the point that holds: " It is improbable that a fully qualified jurisprudent (*faqih*) does not possess the authority to summon for primary jihad (contrary to defensive jihad).

The late Imam Khomeini had not reached this lofty position at the beginning and held that the primary jihad is not authorized for the jurisprudent (*faqih*), but later in Najaf, he

too reached that level and recognized the primary jihad with its own conditions one of the authorities of the fully qualified *faqih*.

Wilayah and Politics

It is occasionally said that *wilayah* does not correspond with government, ruling, and politics, because *wilayah* defined as guardianship is always concerning the individual and not the society and the procedures of ruling a country.

The answer is that the *wilayah* as it is defined as the guardianship upon the interdicted discussed in "Interdiction" (*hajr*) part of the jurisprudence (*fiqh*), and the *wilayah* concerning performance of funeral rites of the deceased person or the *wilayah* that the avenger of blood possesses, none correspond with governing the community. It is not relevant to this holy verse at all: "Verily, your guardian is (*none else but*) Allah and His Apostle (*Muhammad*) and those who believe, - those who establish prayer and pay the poor-rate, while they be (*even*) bowing down (*in prayer*)." (Quran: V, 57) Because this *wilayah* means: ruling and supervision (/administration).

If the message of the above verse is that your guardians and supervisors are the Holy Prophet and Imam Ali (the Commander of the Faithful), then this *wilayah* is addressed to the elite, the faithful, the scholars, the sage people, and not the mad persons.

Therefore, both in genetic and legislative systems the *wilayah* having the meaning of supervision and administration belongs to Allah essentially since Allah said: "... But Allah, He is the Guardian." (Quran: XLII, 9) and said: "... there is none besides Him a Protector." (Quran: XIII, 11).

It is exclusively for Allah to be a *waali* and genetic supervisor and administrator. This is the exclusion of the absolute *wila'* (*wilayah*) for Allah the Exalted, both from genetic and legislative aspects. Allah said: "There is no judgment but Allah's ... " (Quran: XII, 40)

So it has been clear that if one states that there is no *wilayahs* indicating/ defining supervision and administration, it will be a false statement. While if one declares that *wilayah* with the meaning of the mandate of the interdicted is not respective to our community (Iranian community), it will be a true statement because, those who hold the doctrine of *wilayat al-faqih*, do not state that the *wilayah* composed/compiled for the *faqih* in the constitution (of the Islamic Republic of Iran) is of the kind of *wilayah* concerning the interdicted or relating to the ritual bathing of a Moslem's corpse, or the *wilayah* of blood vengeance (*qisas*), blood-money (*diyyah*), and punishments (*hudoud*), because none of them is relevant to supervising the community. The concept of *wilayah* mentioned in the holy verse (Quran: V, 57) is the supervision of the community, that the *wilayat al-faqih* is the manifest of which, that administrates the community in accordance with the scales /measures of injunctions and the intellectual and transmitted sagacity and expediency.

Role of the people for electing a wali al-faqih

It is occasionally said that *wilayat al-faqih* is one of the insolvable problems of the Islamic Republic since its existence necessitates its non-existence! In the other words, if *wilayat al-faqih* exists, then *wilayat al-faqih* does not exist, and vice-versa. Because from one hand in the Islamic Republic, the people have elected, directly or indirectly, a person

as their leader, therefore, the people have vote, and subsequently they are not interdicted and do not need a guardian (*wali*). From the other hand if the jurisprudent (*faqih*) is the guardian/ trustee (*wali*) of the people, so the people do not have vote. That is why no one noticed this insolvable problem that is reconciling the *wilayat al-faqih* with people's vote and acceptance. Because the people have voted not to have vote!

This doubt originates from the point that they have restricted the *wilayah* in that of the part "interdiction", while if *wilayah* is defined as the supervision/trusteeship upon the elite, the wise and the men possessed of minds like what is dealt with in the verse "Verily, your guardian is (*none else but*) Allah and His Apostle (*Muhammad*) and those who believe, - those who establish prayer and pay the poor-rate, while they be (*even*) bowing down (*in prayer*)." (Quran: V, 57) and also the Event of Ghadir and the holy verse "The Prophet (Muhammad) hath a greater claim on the believers that they have on their own selves ..." (Quran: XXXIII, 6), then the above doubt will be solved. Was the *wilayah* of Imam Ali (the Commander of the Faithful) in the Event of Ghadir as the guardianship upon the interdicted or it was as trusteeeship upon the men of understanding (*ulul albab*)?

Waali does not mean the guardian of the interdicted; rather it means the trustee (supervisor/ administrator) concerning the affairs of the elite of the society.

Such a wali or ruler/governor is either completely well known for the people, or not in case he is not well known the people refer to the experts and ask them for information in this regard.

Like when the Holy Prophet asked first for the approval (and acknowledgement) of the audience (in Ghadir Event) saying: "Have I communicated you what (the mission) I was responsible for and I should communicate you or not?" -"Yes", the audience replied. Then the Holy Prophet asked: "Do you approve that I have a greater claim on you than you have on yourselves?" (See: *Al-Kafi*, the Book of the Divine Proof [*Kitab al-Hujjah*]) "Yes", they replied. Then the Holy Prophet said: " For whomever I am the authority and guide Ali is also his guide and authority." And the people accepted.

Can we declare that this is a fact that the existence of which necessitates its non-existence and vice-versa?

(It is true that) if the meaning of *wilayah* is restricted in the guardianship upon the mad persons (for instance), then the *wilayah* may not be compatible with the people's vote, because the *wilayah* of the wali is proved by the vote of the interdicted, while the interdicted person has not vote!

The Prophet himself propounded the Islamic republic and holding a referendum and said that the regime should be Islamic, it is based on the revelation. It must be democratic. It is based on the acceptance of the people. He said that he has been living for forty years among the community and has taken his (social) examinations successfully.

"I lived among you an edge before it; What! Then (yet) ye understand not?" (Quran: X, 16)

After taking a lifetime examination, aren't you wise enough to understand? If not, then accept my demonstration since I am your trustee.

This statement of the Holy Prophet that is "I lived among you an edge before it;" is the republic aspect of the Islamic regime; it means that you accept the fact that all the affairs have been provided from Allah's side: The revelation has sent down, my position has been determined, the prophetic mission, the prophethood, the *wilayah* and the trusteeeship

have been provided all, what remained is your acceptance and act accordingly. Then added: "Demonstrate, this is my miracle."...

Such a thing contains no paradox within itself. In the other words, what is relevant to the law and the commentators of it - that is the Ahl al-Bayt themselves- and what is defined as the explainer and teacher of the Book and Wisdom and the purifier of the souls and what is as the executer of the punishment laws, all have been provided within this religion. Only the acceptance of the people has remained. This acceptance is related to as to be the wali of the people and not the client/lawyer of them. Never there will be contradiction/contradiction with the acceptance of the people. All the posts are approved for the Infallible but to take affect such posts needs the people's vote. Such a commentary on the *wilayah* is free from the injury of dreaming the contradiction.

Alteration of posts and the necessity of experts

Since the true posts are perfection, therefore, the false posts are countless contrary to it. The range of it oscillates from the Lordship to the faith. Some instances are presented below so that it clears that opposite a truth there is a falsehood that claims being truth. Concerning the lordship that means that Allah is the Lord of the worlds and there is no lords but He, some attempted first to struggle/fight against the notion of lordship from its basis, but when they found out that the man is in need of the Lord at last, then they declared that yes, the man is in need of the lord, and the lord exists but it is not Allah, rather we are the lords! " And (Pharaoh) said: 'I am your Lord, the most High!'" (Quran: LXXIX: 24), " And said Pharaoh: 'O' Chiefs! I know not any *Allah* for you other than me," (Quran: XXVIII, 38). Pharaoh did not say this at first, but after refusing the notion of Lordship and not taking a good result of it declared: "I agree that the society is in need of a Lord, but the Lord is me and not whoever you claim."

After the lordship, the prophethood may be dealt with. While the prophets were sent from Allah, the Exalted, the heads of oppression and blasphemy fought against the notion of prophecy and prophetic mission, but since they did not get a good result, reacted that the prophethood is true. It is true that certain individuals (prophets) are appointed by God and are sent from Him to guide the people, but "A" is the prophet and not "B".

In case of advent of a true prophet, many false prophets appeared in contrary.

When certain heads of the Ignorance were asked: "Why didn't you believe in the Prophet in spite of all his miracles, but you have approved the statements of Musaylimah, the liar instead?"

"Because he is a member of our tribe", they replied.

Caliphate and Imamate were the same as this. At first they said that the Prophet has not appointed anybody as his successor, a guardian and a leader for the community. Then they concluded that it was impossible that the Prophet has declared everything (of lesser importance) but has neglected the most important part of the religion that is, the leadership. Then they claimed and quoted plenty of the virtues for the others and announced (publicized) false and faked hadiths concerning the caliphate of some of them. At the next step the clergymen and the scholars were dealt with. The oppressor countries struggled with the scholars and the religious intellects, but when they realized their

popularity in the society and that the clergy is a genuine and popular institution, then they established court clergymen to issue verdict to satisfy their wills.

In the fifth phase we confront the populace and observe the process of faith among them. The hypocrites fought the faith as far as possible at the first step, but when they realized that the faith is a welcomed fact among the community, pretended to be faithful.

"And when they meet with those who believe, they say, "we believe" but when they go apart to their devils, they say, "surely we are with you, verily, we did but mock." (Quran, II, 14)

It has been clear so far that (in a range) from the "Lordship" to the "Faith" and from the faith to the "divinity" there always has been a false and fake process contrary to the true and genuine one.

In case the offices are being altered, and the truth and untruth are being mistaken how the people can distinguish between the truth and the falsehood (that is the true person and the false one)?

People's vote is for the very same reason that they think and select the truth, therefore, it necessitates to refer to the experts and it becomes compulsory to establish the Assembly of Experts.

The Paradox Between *wilayat al-faqih* and the People's Election

It is said that wilayat al-faqih contradicts the ruling, democracy, liberty of the individuals, elections, and establishing the Assembly of Experts, etc. Therefore, a regime that is based on wilayat al-faqih is false, and consequently all contracts whether national or international signed with such a regime is invalid and void according to the religious rites, and thus the latter party of the contract can vindicate his/her own rights.

They propound two evidences:

1. Since the term '*wilayah*' means guardianship upon the interdicted, so it contradicts the people's vote, election for the Assembly of Experts and the like.

That is whether the people directly elect the jurisprudent (*faqih*) or empower someone to elect the guardian (*wali*) for them, indicates in the both cases that from the one hand the people are wise and sagacious, and have the vote, and consequently do not need a guardian, from the other hand if the jurisprudent is a guardian (*wali*) upon the people, then the people do not have vote.

Considering the contradiction available in the regime based on wilayat al-faqih indicates that such a regime is a paradoxical one!

2. Considering the general sense of the contracts, any kind of conditions that opposes and contradicts the text and purport of the contract, will cause the contract to be invalid and void.

The examples below may make the matter clearer:

The content of the contract is divided in four categories:

- Ownership of the essence/substance (*`ayn*)
- Ownership of the benefit/profit (*manfa`ah*)
- Ownership of the exploitation (*intifa`*)
- The right of receiving enjoyment (*istimta`*)

Instances:

1. Such as the (act of) purchase and sale

2. Such as the contract of renting /leasing
3. Such as the contract of borrowing
4. Such as the matrimonial contract

The instance of the first kind is dealing (purchase and sale) and the compromise that has the ordinances/ injunctions of the purchase and sale. The content of such a contract is that the vendor becomes the possessor of the price, while the buyer becomes the owner of the commodity. The content of purchasing contract is the possession of the substance (*`ayn*), while in renting; the content of the lease is the possession of the profit (*manfa`ah*) (for the lessor/landlord) and not the substance.

He, who takes a commercial unit or a residential one on lease, it denotes that the property itself is for the lessor, however, in exchange for the lease, the leaseholder becomes the owner of the profit of it.

The third kind that is the ownership of the exploitation is that when, for instance, the borrowing contract was signed, the borrower that, for instance has borrowed a vessel that is the loaner has given the borrower the loan of it.

And this contract/agreement was done either verbally or practically (*mu`aataat*) the borrower can exploit that vessel but is not the owner of its profit.

This case is different from hiring a vessel from the stores that let out vessels and kitchen utensils. For, in these cases one owns the profits of the vessels while he who borrows a vessel from his/her neighbor is the owner of the exploitation of it and not the profit of it.

In the contract of matrimony the husband possesses the right of receiving enjoyment by the marriage formula (contract) and becomes the *mahram* (ritually intimate) with his spouse.

The question that is raised now is that in case a forbidden condition that does not contradict the necessity of the contract whether or not invalidates the contract.

Some jurisprudents hold that the forbidden condition does not invalidate a contract, although it contradicts the Book of God, and also is invalid (*fasid*); but in the event that a condition contradicts the explicit text of the contract (neither opposing the general application of the contract nor its requisite) there is not controversy that such a condition is both invalid and invalidating the contract.

For instance, the two parties stipulate within the deal contract that a party sells a house to the latter party provided that the buyer does not become the owner of the house! Or on the condition that the vendor does not own the price of it!

Such a condition that contradicts the necessity of the contract is both invalid and invalidating the contract.

Another instance is that, one leases a trade or a residential unit provided that the lessee does not own its profit, and that at the same time the landlord does not possess the rent!

The third instance is that one lends a vessel on the condition that the borrower does not have the authority of exploitation.

The fourth instance is that the contract of matrimony is arranged in such a way that it is conditioned within it that the spouses do not become ritually intimate (*mahram*) with one another.

All of the above conditions contradict the necessity of the contract and consequently are invalid and they invalidate the contract.

Some (of the jurisprudents say that) the issue of wilayat al-Faqih is same as these cases, that is, the people sign a contract (election) with the fully qualified jurisprudent and

undertake mutually and vote that they do not possess the vote and will not interfere the contracts. For, the meaning of the *wilayah* is that all the authority is in the hands of the *wali-e faqih*, and the people are under the guardianship, are interdicted, and have not the authority to comment.

And they conclude that these kinds of referendums and elections are invalid and necessarily invalidating, for, they contradict the content of the contract and the mutual undertaking, and consequently, the referendums held so far are invalid and invalidating, and the government in which they resulted in are invalid. And also, all kinds of the deals whether local or international are invalid.

The Answer

It is true that a condition that contradicts the necessity of the contract/pact is invalid (*fasid*) and corrupter (*mufsid*), but two points should not be neglected: First, the term *wilayah* having the meaning of supervision and being a *wali* is separated from the *wilayah* discussed under the topic of interdiction (*hajr*) in the Islamic jurisprudence.

If one speaks about the issues of the Islamic government, the Islamic policy, and the trusteeship of the jurisprudent (*wilayat al-faqih*), he should totally dispense with the *wilayah* (guardianship) upon the immature, the dead, and so on and should just think of the verse (Quran: V, 57).

Whatever this holy verse carries as a message, it is true first for the prophets, then the Infallible Imams, and then their special deputies, such as Muslim ibn `Aqil and Malik Ashtar, and then for those who are appointed generally by them, like the late Imam Khomeini.

Secondly, both the opponents and pro-*wilayat al-faqih* have accepted two instances of *wilayah* of the fully qualified jurisconsult.

The first instance is that when the people accept an authority (that is a leading jurisprudent), do they select him as their attorney (*wakil*) or as *wali* in *fatwa*?

Indeed, the religion has appointed the fully qualified jurisprudent for this position, whether the people refer to him or not, but to put this appointment in practice depends upon the acceptance of the people.

Many a time a fully qualified jurisprudent that can be a leading *faqih* (jurisprudent), but since he has not made himself known, or the people do not know him by one reason or another, therefore, his authorization will not be put into practice, at the same time another *faqih* having the same scientific conditions may be welcomed and accepted by the people.

Now the question is that such a person that is recognized as the authority, whether is the attorney of the people, or he has been appointed this position by God, but since the people have found such a merit and quality in him so, they have referred to him. Therefore, such a person cannot be their attorney at all, for the attorney does not possess any authority, unless the people entitle it to him by establishing the contract of empowering. The approval of the power of attorney is conditioned to the establishment of empowering by the people, while concerning the approval of being an authority it is not like that the people and the followers submit him the office of being an authority.

Another instance is the judgment of the fully qualified jurisprudent during the period of occultation. It has been acclaimed by all, that the fully qualified jurisprudent has the right of judging. Is the fully qualified jurisprudent in the position of judgment the attorney of

the people? Has the religion of Islam appointed him judge? [The true answer is that] he is the judge, and the people give no positions to him. If the people refer to him and accept him, then his judgment will be put into practice.

These two instances are not of the kind of the power of attorney, rather are a part of trusteeship (*wilayah*), that is the fully qualified jurisprudent being an authority, is the *wali* of decree (*fatwa*) and not the people's attorney (*wakil*) in issuing a decree (*ifta*) for his followers. Such an authority should be submitted obligatorily. The same is true for the fully qualified jurisprudent that is a judge, the difference is that one of them informs/advises (*ikhbar*) while the latter establishes (*insha'*); like a fully qualified jurisprudent that has occupied the position of judgment and issues decrees.

So the people refer to positions that the religion has granted/allocated to the fully qualified jurisprudent and realized them and then recognized them. If the fully qualified jurisprudent has a worldly reputation – like Shaykh Ansari – then there will be no need to testimony/certification of two just witnesses.

The followers can refer to him directly. In case several scholars equal from the aspect of justice, or one was more knowledgeable than the others but was not as famous as the rest, then the people consult the experts to know who is the most knowledgeable or who equal with one another. So in these cases when one refers to a scholar in fact he has recognized his authority position. It is not true that he has given that scholar the authority, therefore, that attorney of the people in giving decree or in judgment.

This acclamation of the people is not power of attorney; rather it is the acceptance of *wilayah*.

If, for instance, the people accept/recognize the authority of a person provided that to be silent and submissive in lieu of his jurisprudential decrees, is this condition opposing the exigency/necessity of this pact?

If some people accept the position of judgment of a fully qualified jurisprudent and declared within their acceptance that they trust (in) the judgment and the sovereignty of his juridical system, provided that they be silent and submissive against the decrees given by him, then is this condition opposing /contradicting the exigency/necessity of such a pact?

If the people selected a group as experts to introduce to them the competent leading authority, are these selections and voting contradicting the recognition /acceptance of the authority and being silent and submissive before the decrees (*fatwas*) of the authority?

So those who oppose the *wilayat al-faqih*, accept two samples of the fully qualified jurisprudent, but dispute in the third sample, that is the trusteeship (*wilayah*) upon the community and the policy declaring that this kind of voting to a jurisprudent is equal to lack of voting, and that this condition contradicts the necessity of the pact.

(As the answer) we say that when the fully qualified jurisprudent became (was elected/designated as) the *waali* of the community, and the elite wise and intellectual people acclaimed his *wilayah*, and declared that the (Divine) command (Quran: V, 57) is originally for the Infallible Imam, and then for his special deputy, and in the event that the special deputy was not available, then it will be for the common deputy in the third rank. The also state that they have accepted the *wilayah* of them (the Imam or his deputies) to act according the Book of God and the Sunnah of his Apostle. Does this indicate that whatever business/deals that jurisconsult has made, or the contracts and pacts he has established are of the interfering types and consequently invalid?!

The fact is that, the people have accepted the religion and believe that they have no votes opposite it, and since they are elite they say that they have not another statement in front of God, and they do not practice independent reasoning (*ijtihad*) against the clear terms (*nass*).

When a person accepts the religion, this acceptance is the truth. When he verified the religion and realized that it is the truth, and then accepted it, therefore, admits that the *fatwas* of the religion are the truth and his will does not contradict the truth, and that he does not possess any *ijtihad* in front of the *nass*.

The believers that acclaimed the *wilayah* of Imam Ali, the Commander of the Faithful, did they accept him as their attorney? Or they recognized him as their *wali*?

God, the Exalted, said to the Prophet: (*O' Our Apostle Muhammad!*) Deliver them what hath been sent down unto thee from thy Lord (Quran: V, 70)

He communicated the message of God to the people saying: " For whomever I am the authority and guide, Ali is also his guide and authority."

The people accepted saying: "May this position be pleasing to you O' the Commander of the Faithful!"

And gave him their allegiance. Did they designate him as their attorney, indicating that the Imam had no positions without the vote of the people?! Or did they recognize him as their *wali*? If one holds that Imam Ali was the attorney of the people, it means that so long as the people have not voted to him and have not recognized, he will have no rights, while, if we hold that he was appointed by God, then he has the right and authority of guardianship (and supervision), and (consequently) the people recognized this fact and accepted it.

Therefore, (it is concluded that) any kind of the contracts the Islamic *waali* signs or it is signed on his behalf, is in accordance with a good will of the people, for the people recognized that this school of thought is true, and voted in its favor, and appointed one who knows this school of thought well, believes in it, and is the executer of it, as the responsible of this task; indeed, they have accepted his responsibility, so, it is not the case of empowering him. Such a condition never contradicts the necessity of the contract.

It is concluded that, firstly, the power of attorney (*wikalah*) differs from trusteeship (*wilayah*); secondly, the *wilayah* is divided into several kinds, thirdly, the *wilayah* that is propounded in the issue of governing and ruling is not of the kind of *wilayah* discussed in the chapter of "the interdiction", rather it is of the kind discussed in the holy verse "Verily, your guardian is (*none else but*) *Allah* and ..." (Quran: V, 57), fourthly, both positions are true for the jurisprudent, but one is (given) originally while the other one is subordinates and as a deputy.

Therefore, if one states that the fully qualified jurisprudent is the Imam's attorney (*wakil*), it is true, and if he states that he (the jurisprudent) is the attorney, or the deputy of or appointed by Imam Mahdi, it is also true; but if he states that the fully qualified jurisprudent is an attorney on behalf of the people or is appointed by them, this would be a false statement.

The difference among these four matters is that, the Infallible Imam and (particularly) Imam Mahdi- may our lives be sacrificed for him - can do two tasks:

One option is that he appoints a person to represent him (the Imam) and to act as his attorney to do certain tasks; it means that he becomes the Imam's attorney and deputy; this is true. Another option is that he establishes the trusteeship (*wilayah*) for a person.

For instance, in the event that there are endowed properties that are lacking of a custodian (due to his death or because a custodian has not been appointed for it so far), the Imam appoints a custodian for it. This is the establishment of trusteeship (*wilayah*) for him.

In case, an authority (a leading mujtahid) empowered a person or persons, once this authority dies, the power of attorney of his attorney will be nullified, for, the validity of the power of attorney is dependent upon the life of the client (i.e. the authority); while if that authority appoints a person as the custodian of a certain endowed property, the custodianship of him will endure continuously even after the death of that authority. So, to empower is different from the establishment of trusteeship.

These are two instances in which the Infallible Imam can both empower a person (i.e. as his attorney) and establish the trusteeship for a person. But the people have not the authority in neither of these tasks concerning the religious issues. It is not true that the people empower the leading authority, or establish the office of trusteeship (*wilayah*) for him. The people neither establish the power of attorney in the judgment for the fully qualified jurisprudent, so that he becomes their attorney to be a judge, nor they establish the office of trusteeship for judging so that he becomes the custodian of judgment, and to have the trusteeship upon judgment on behalf of the people.

Rather the offices that the religion has granted to the fully qualified jurisprudents, whether the people accept or not, that jurisprudent possesses this authority in a demonstrating manner (*thuboutan*), but the intellectual pious people identify the individuals that deserve such offices, then recognize and accept the office of one who is fully qualified. As it is the recognition and acceptance in the discussion of the position of an authority (*marji`iyyah*) and not the empowering, concerning the jurisprudent that has trusteeship upon the people, the discussion is also the recognition and acceptance and not the empowering.

In some cases the people accept the trusteeship of the Special Deputy (of the Imam), like those who accepted the *wilayah* of Muslim ibn `Aqil and Malik ibn Ashtar. As they accept the trusteeship of the General Deputy in the other cases.

So, it is not true that trusteeship of the jurisprudent is an invalid condition and invalidates the contract so that the local and international treaties of the Islamic System to be unauthorized.

So, it has been (clearly) concluded in brief that the *wilayah* discussed in the Holy Quran and in the traditions in some cases denote undertaking the affairs of a dead (deceased) or he who is tantamount to him/her; and in the other cases it means the tenure of the affairs of the community.

The following contain two series of some Quranic verses for instance, concerning the two different meanings:

The verses indicating the *wilayah* upon a dead (deceased) or he who is tantamount to him/her:

1.A. The *wilayah* upon a dead (deceased)

And whoever is slain unjustly, then indeed have We given his heir the authority by God that surely we will suddenly attack by night, him and his family, and then surely we would say unto his heir we witnessed not the murder of his family, ... (Quran: XXVII, 49)

1.B. the *wilayah* upon the interdicted who are tantamount to a dead

But if he who oweth be witless or infirm, or if he be not able to dictate himself then let his guardian dictate justly ... (Quran: II, 282)

They said: "Swear ye to one another by God that surely we will suddenly attack by bight, him and his family, and then surely we would say unto his heir we witnessed not the murder of his family, ..." (Quran: XXVII, 49)

The verses denoting the trusteeship (*wilayah*) upon the Islamic Community:

"Verily, your guardian is (*none else but*) Allah and His Apostle (*Muhammad*) and those who believe, - those who establish prayer and pay the poor-rate, while they be (*even*) bowing down (*in prayer*)." (Quran: V, 57)

"The Prophet (Muhammad) hath a greater claim on the believers that they have on their own selves ..." (Quran: XXXIII, 6)

Either kinds of *wilayah* has its respective terms and conditions (ordinances) that were discussed in this article in brief. Wilayat al-Faqih is of the second kind. Therefore, it is not at all the question of being the Islamic Community an interdicted one; and none of the ordinances of the *wilayah* upon the interdicted – discussed in the Islamic jurisprudence including the chapters of the funerals, taking reprisals, reduction (of the punishment), pardon, blood-money, *wali* of the blood of the slayed (*maqtoul*), or the chapter of the interdiction - are applicable in this case.

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