

A Doctrine in the Making? *Velayat-e faqih* in Post-Revolutionary Iran*

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The way how Iranian clerics are acknowledged as religious authorities, or themselves lay claim to such a position, has undergone fundamental changes since the Islamic Revolution, specifically in the period after Ayatollah Khomeyni's death in 1989. The same is true of the functions performed and the range of powers held by clerics, first and foremost the *marja* as *primus inter pares*. Not surprisingly, the arguments used to support their claims to religious authority (and political power) have also changed. This paper will discuss both the arguments employed by post-revolutionary Iranian clerics in favor of *velayat-e faqih* (the rule of the Supreme Jurisconsult) and those of its critics. In terms of individual authors, I will focus on the arguments put forward by Ayatollah Mohammad Taqi Mesbah Yazdi, one of the theoreticians of the official Iranian position, and the viewpoints of Iran's most outstanding dissident on the subject, Hoseyn Said Montazeri.

One of the crucial points distinguishing modern Shiite Islam from Sunni Islam consists of the fact that it has a clergy that is hierarchically organized.¹ This clergy became the highest non-governmental author-

* This article was already published in: "Speaking for Islam," edited by Gudrun Krämer and Sabine Schmidtke, Brill, Leiden 2006, pp. 219–240. It is reprinted here by kind permission of Koninklijke Brill Publishers.

¹ After 15 to 17 years of study, the student receives permission to issue legal opinions (*fatāwā*). From this point on he is a *mujtabid* and entitled to bear the title of *hujjat al-islam* ("evidence of Islam"). If he can attract a large following, and if a number of scholars of equal or higher rank recognize his authority, they will at some time begin to address him with the title of *Ayat Allah* ("sign of God"). Every *mujtabid* who is recognized by several *maraji al-taqlid* ("sources of emulation," sg. *marja al-taqlid*), who has a large number of "followers" (*muqallid*, i.e. a believer who has chosen a "source of emulation"), has authored a collection of legal opinions and written a "practical treatise" (*risalat tausi al-masail*; pers. *resale-ye amaliye*), a treatise on ritual obligations, can himself become a "Source of Emulation." In terms of its theoretical foundations, the institution of the *marja* was elaborated by Mortaza Ansari (1800–1864). Cf. Juan R. Cole,

ity in Iran with the victory of the *usuli* school over the *akbbari* school in the nineteenth century. From then on, all believers had to choose a “source of emulation” (*marja-e taqlid*).² Renowned clerics were thus not only able to build up a large following: By the same token, large sums of money were placed in the *marja*’s hands, for the ordinary Shiite believer is obliged to pay the Imam’s share (*sahm-e imam*) to his “source of emulation,” who manages it on behalf of the Imam during the period of the Great Occultation (*gheybat-e kobre*). (Previously, the believers had paid the Imam’s share to the local mullah.) The larger a cleric’s following, the more funds he has at his disposal, and hence the more power—financial as much as social—he is able to wield.³ This element of religious taxation secured some scholars a high degree of financial autonomy vis-à-vis the state, a factor which enabled those at the top of the Shiite hierarchy to play an important role in politics, as became apparent in the tobacco protest of the 1890s.⁴ Still, Shiite clerics in Iran and Iraq were mostly quietists in the first part of the

“Imami Jurisprudence and the Role of the Ulama. Mortaza Ansari on Emulating the Supreme Exemplar,” in *Religion and Politics in Iran. Shi’ism from Quietism to Revolution*, ed. Nikki R. Keddie, New Haven/London 1983, pp. 33–46. He was also the first generally recognized *marja*. In subsequent years, several supreme “sources of emulation” were often recognized because agreement could not be reached on one single *marja*. The last generally recognized *marja* was Grand Ayatollah Borujerdi between 1949 and 1961.

² For an overview, see Ahmad Kazemi Moussavi, “The Institutionalization of Marja-i Taqlid in the Nineteenth Century Shiite Community,” *The Muslim World* 84 (1994), pp. 279–99; idem, “The Establishment of the position of the Marjaiyyat-i Taqlid in the Twelver-Shiite Community,” *Iranian Studies* 18 i (1985), pp. 35–52; see also Cole (n. 1 above).

³ The clerics use these funds mainly for the theological colleges and their students’ alimony—but only for those students who study jurisprudence. Clerics who specialize in fields other than Islamic law cannot become a *marja*, no matter how great their knowledge. This does not imply that they are not accepted as religious authorities, but rather that they are not entitled to receive a share of the Fifth (and the Imam’s share). For example, Allama Tabatabai (1892–1981), author of the Quranic commentary *al-Mizān il tafsir al-Quran*, was one of the most highly esteemed scholars of his time. His commentary was a seminal work in Shiite Quranic exegesis, and his philosophical works are counted among the most influential in the Shiite debate on materialism. Still, he did not receive any part of the Imam’s share since he had neither a collection of legal treatises to his name, nor did he teach law.

⁴ See Ann K. S. Lambton, “The Tobacco Regie. Prelude to Revolution,” *Studia Islamica* 22 (1965), pp. 119–57.

twentieth century⁵; the majority held chiliastic expectations of salvation, maintaining that, until the return of the Twelfth Imam, any kind of rule—even the rule of the clergy—could be but illegitimate. Awaiting the coming of the Imam-Mahdi, they withdrew from active participation in the affairs of the state—as their predecessors had done in previous centuries.⁶

One of the most outstanding personalities contesting this attitude was Ayatollah Ruhollah Khomeyni (1902–1989), who articulated his opposition while living in exile in Iraq in the 1960s and 1970s. In his view, the Shiite scholars (or to be more precise, the jurisconsults among them) are not only the sole authority for interpreting revelation (i.e., the Quran), but they are also responsible for having its injunctions implemented. As a result, the clergy must not only be involved in politics, but must assume political leadership.⁷ Khomeyni pointed out that only the most learned of all jurisconsults, the universally accepted *marja*, is capable of leading the Muslim community. Article Five of the Iranian Constitution prescribes the Supreme Jurisconsult's Rule (*velayat-e faqih*). It states that the deputy of the Twelfth Imam (*nayeb-e imam*) and his representative on earth is to be “the jurisconsult capable of leadership,” who is “accepted and acclaimed as Islamic leader by the majority of the population”—a much debated point lately.⁸ The debate revolves around a number of questions: who is qualified and legitimized to be this leader, by whom he is to be legitimized, and how is the population to be involved, raising the issue of popular sovereignty.

This paper does not deal with those intellectuals, scholars and activists who are fundamentally opposed to the concept of *velayat-e faqih*: they can be found among secularists as well as among quietist clerics.⁹ Even in Khomeyni's time, the concept ***of velayat-e faqih*** was

⁵ Jean-Pierre Digard, Bernard Hourcade and Yann Richard, *L'Iran au XXe siècle*, Paris 1996, p. 172.

⁶ Ann K. S. Lambton, “Quis custodiet custodes. Some Reflections on the Persian Theory of Government,” *Studia Islamica* 22 (1956), p. 133.

⁷ Ajatollah Chomeini, *Der islamische Staat*, translated from the Persian and edited by Nader Hassan and Ilse Itscherenska, Berlin 1983, p. 59ff.

⁸ Botschaft der Islamischen Republik Iran (ed.), *Verfassung der Islamischen Republik Iran*, Bonn 1980, p. 27.

⁹ It is difficult to ascertain just how high the number of quietists among the Shiite clergy is at any given moment in time. Wilfried Buchta maintains that in the 1990's, the majority of the Iranian clergy was opposed to *velayat-e faqih*. In supporting his view, he cites data given to him by an employee of the

not without its critics. Jean-Pierre Digard, Bernard Hourcade and Yann Richard even claim that most scholars based in Qom were opposed to *velayat-e faqih* at that time.¹⁰

How to Qualify as *Vali-ye faqih* and Whose Standards Are to Be Met?

In March 1989, Khomeyni disavowed Grand Ayatollah Hoseyn Ali Montazeri (b. 1922), his designated successor in the position of *vali-ye faqih* and leader of the revolution (*rahbar*)¹¹, and dismissed him from public office.¹² However, no adequate replacement could be found for Montazeri, because the clerics willing to serve in this function were no “source of emulation,” and the “sources of emulation” were not willing.¹³ In response to this situation, Khomeyni ordered that Article 109

“Committee for Defending the Rights of the Shiite Marjaiyya” (*Lajnat al-difa an lajna al-marjaiyya al-shia*). This Committee is an underground organization dedicated to non-violent resistance against clerical rule. It claims to have about 1.000 members, most of them Arabs and Iranians. No official figures are available on the ratio of political to non-political clerics in Iran, and it is difficult to ascertain whether the Committee’s figures are correct. According to the Committee, of a total of 20 Grand Ayatollahs, who rank a step below the “Absolute Source of Emulation” (*marja al-taqlid al-mutlaq*, arab.; *marja-e taqlid-e motlaq*, pers.), the primus inter pares who is accepted by all other *ayatollahs*, 14 lived in Iran in the 1990’s. With the exception of Hoseyn Ali Montazeri all of them are said to oppose the concept of *velayat-e faqih*. See Wilfried Buchta, “Ein Haus mit vielen Herren. Divergierende Machtzentren in der Islamischen Republik Iran,” *Orient* 39 i (1998), p. 70.

¹⁰ Digard et. al., *L'Iran*, p. 172.

¹¹ Khomeyni’s successor is also addressed as leader of the revolution (*rahbar*), as the Iranian religious establishment maintains that the Islamic Revolution is still ongoing.

¹² In a letter to Khomeyni Montazeri had criticized violations of human rights and blamed the government for the continuing economic problems, as well as the fact that investments were blocked. For Montazeri’s biography, see Yann Richard, “Hoseyn-Ali Montazeri,” *Orient* 26 (1985), pp. 303–306; N. Schahgaldian, *The Clerical Establishment in Iran*, Washington 1989, pp. 48–49.

¹³ H. Teimourian, “The Mullah Goes Back to the Mosque,” *The Middle East* (May 1989), p. 21. Shahrough Akhavi, “Elite Factionalism in the Islamic Republic of Iran,” *The Middle East Journal* 41 ii (1987), p. 190. On the other hand, there are scholars who maintain that Montazeri, too, was not accepted as a *marja* at this time; see Maziai Behrooz, “Factionalism in Iran under Khomeini,” *Middle Eastern Studies* 27 iv (1991), p. 609; N. Schahgaldian, *The Clerical Establishment*, p. 37. In the early 2000s, Montazeri appeared to be widely recognized as *marja*. However, this may be largely due to his oppositional views.

of the constitution, which prescribed that the *vali-ye faqih* be a *marja*, a “source of emulation,” be suspended.¹⁴ This measure considerably lowered the level of religious qualification demanded of the holder of the highest public office. Khomeyni’s reasoning now shifted to politics: he argued that instead of someone steeped in religious scholarship or well versed in juridical subtleties, the office of *vali-ye faqih* required a leader with sound political instincts, and that this person need not necessarily be a *marja*.¹⁵ This was a sudden turn, given the fact that he had previously argued that only the universally accepted *marja* was capable of leading the Muslim community. To justify his new position, he now stated that he had always thought it sufficient for the Supreme Jurisconsult to be a mere *mujtahid*.¹⁶ The relevant passage in the constitution was thus amended to read as follows: the indispensable qualification for the Supreme Jurisconsult is *agah budan be zaman*, “to be up to date politically and to be able to represent the Revolution’s ideological foundations and goals.”¹⁷ According to Olivier Roy, this qualification also influenced the official titles of “Leader of the Revolution” (*rahbar-e enqelab*), “Highest Authority of Leadership” (*maqam-e moazam-e rahbar*), or just “Leader,” which is the title most often used to address Khomeyni’s eventual successor, Khamenei.¹⁸ In theory Khomeyni, too, held the title of “Leader of the Revolution,” but he was rarely addressed as such. Because of his overwhelming authority he was called Imam, even though he referred to himself as *nayeb-e imam*, the deputy of the Imam. (Unlike the Sunnis, Shiites do not use this title for the leader(s) of prayer, but rather reserve it for the Twelfth Imam.) Critics have always targeted this practice—precisely because it might give rise to the impression that with Khomeyni the Twelfth Imam had returned. Ayatollah Shariatmadari was of the opinion that the title sounded blasphemous to Iranians, even when used for Arab clerics such as “Imam” Muhsin al-Hakim.¹⁹

¹⁴ See Wilfried Buchta, “Die Islamische Republik Iran und die religiös-politische Kontroverse um die *marja’iyat*,” *Orient* 36 iii (1995), p. 453.

¹⁵ Silvia Tellenbach, “Zur Änderung der Verfassung der Islamischen Republik Iran vom 28. Juli 1989,” *Orient* 31 i (1990), p. 49.

¹⁶ Tellenbach, “Zur Änderung der Verfassung,” p. 49.

¹⁷ *Qanun-e asasi-ye jomburi-ye esLAmI-ye IrAn*, p. 32.

¹⁸ Olivier Roy, “The Crisis of Religious Legitimacy in Iran,” *Middle East Journal* 53 ii (1999), p. 206.

¹⁹ Michael Fischer, “Becoming Mollah. Reflections on Iranian Clerics in a Revolutionary Age,” *Iranian Studies* 13 (1980), p. 88.

Ali Khamenei (b. 1939) was appointed by the Council of Experts (*majles-e khobregan*), the body charged with the task of selecting the *vali-ye faqih*, shortly after Khomeyni's death on June 3, 1989. Yet the fact that Khamenei does not combine the highest political and religious rank in his person, since he is not generally accepted as a "source of emulation," poses considerable problems. There are presently several scholars whose juridical qualifications far exceed Khamenei's. A powerful religious authority could thus challenge and undermine his claim to lead the Shiite community. This is perhaps why immediately after taking office Khamenei put his greatest rival Montazeri under house arrest. Khamenei is acutely aware of this situation, as is evident from his repeated attempts to elevate himself to the status of *marja-e taqlid*. After Khomeyni's death, most of the Shiites followed Grand Ayatollah Abu l-Qasim al-Khui as their *marja-e taqlid*, while some chose Grand Ayatollah Marashi Najafi or Grand Ayatollah Golpayegani.²⁰ After Khui's death in 1992, the al-Khui Foundation located in London opted for Golpayegani as his official successor.²¹ Upon Golpayegani's death in 1993, Khamenei made the first move to unite the positions of *vali-ye faqih* and *marja-e taqlid* in his person: he arranged for Golpayegani to be honored with a state funeral in Tehran, planning to position himself as his successor by leading the prayers at the grave. Golpayegani's family, however, thwarted his plans and buried the deceased in Qom with only his closest relatives present. After Golpayegani family had publicly rebuffed him, Khamenei declared his support for Ayatollah Mohammad Araki (died 1994), a cleric who was not interested in politics, a move followed by twenty-four clerics from the middle ranks of the Iranian clergy who were counted among the "political clerics." The non-political faction of Qom's clergy refused to accept this move though; they nominated Grand Ayatollah Sadeq Ruhani (d. 1997), a student of Khui's, as *marja-e taqlid*. Ruhani called for the clergy's complete withdrawal from politics and was immediately arrested.²²

²⁰ Rainer Hermann, "Von der Wirtschafts- zur Legitimationskrise. Die Ära Khamenei/Rafsanjani in der Islamischen Republik Iran," *Orient* 35 iv (1994), p. 559. For the political attitude of al-Khui, who opposed the *velayat-e faqih*, see Yousif al-Kho'i, "Grand Ayatollah Abu al-Qassim al-Kho'i. Political Thought and Positions," in *Ayatollahs, Sufis and Ideologues. State, Religion and Social Movements in Iraq*, ed. F. Abdul-Jabar, London 2002, pp. 223–30.

²¹ Hermann, "Von der Wirtschafts- zur Legitimationskrise," p. 560.

²² Further information on this event is offered in Hermann, "Von der Wirtschafts- zur Legitimationskrise," pp. 541–64.

After Araki died in 1994, Khamenei again sought to become *marja-e taqlid*.²³ But many *ulama* and ordinary believers were incensed at Khamenei's attempts to have himself declared a "source of emulation" without having published a "practical treatise" (*resale-ye amaliye*), a necessary precondition to qualify as *marja*. Leading Iranian clerics, such as Khamenei's brother-in-law *shaykh* Tehrani, who was at that time exiled in Iraq, wrote a petition (and ran a high personal risk in doing so) demanding that Ayatollah Montazeri, *persona non grata par excellence*, be appointed Araki's successor. He maintained that Montazeri was the only qualified jurisconsult, being the most learned of all Iranian clerics and the only *marja* living in Iran.²⁴ Mehdi Karrubi, at the time member of the Council of Experts, and other high-ranking clerics, such as Ayatollah Khalkhali, supported this petition.²⁵ Others voiced their criticism as well: Mehdi Bazargan (d. 1995), first Prime Minister of the Islamic Republic and at the time leader of the semi-legal oppositional "Liberation Movement" (*Nehzat-e azadi*), argued in an interview with the Persian Service of the BBC that the religious establishment of the Islamic Republic was trying to undermine one of the basic principles of the Shia, namely the more or less democratic way of choosing one's own religious authority. Bazargan complained that the unity of state and religion that existed in Iran was being exploited to force upon the population a *marja* chosen by officials—an act unprecedented in Shiite history.²⁶

Having attracted scathing criticism from diverse quarters, Khamenei publicly stated that he had no interest in becoming Araki's successor for the Iranians.²⁷ At the same time though, he offered himself as the "source of emulation" to Shiites living outside Iran—an

²³ See Buchta, "Die Islamische Republik Iran und die religiös-politische Kontroverse um die *marja'iyat*," pp. 449–74.

²⁴ Although it is not necessary that Iranian Shiites choose an Iranian as their "source of emulation," nationality frequently plays a role.

²⁵ BBC, Persian Service 11/30/1994. Those who signed the petition expressed the opinion that Montazeri was undoubtedly the most learned and most qualified Shiite scholar of the time. Ali Tehrani was sentenced to a prison term of twenty years *in absentis* in December 1994. See *Ettelaat* 21/12/1994.

²⁶ BBC, Persian Service, 11/30/1994.

²⁷ W. Buchta's assessment that Khamenei managed to become accepted as Grand Ayatollah in Iran (see Buchta, "Die Islamische Republik Iran und die religiös-politische Kontroverse um die *marja'iyat*," p. 458) must be corrected: a substantial part of the population and the clergy do not even accept his claim to the title of *Ayatollah*.

obvious attempt to attain leadership over the Shiites living in the diaspora and to strengthen his position in Iran at least indirectly.

Another attempt made by Khamenei to establish his leadership over the clergy was to gain personal financial control over the Grand Ayatollahs: he suggested that all believers should pay the Imam's share directly to his office and that he would then distribute the funds to the Grand Ayatollahs to finance their theological colleges and students. To grant Khamenei the right to receive "their" Imam's share would have been tantamount to accepting him as the "Absolute Source of Emulation." Khamenei's proposal was roundly rejected by several renowned "sources of emulation" including Grand Ayatollah Yusuf Sanei, who stated that he was neither interested in losing his independence, nor was he in favor of the current politicized version of religious leadership.²⁸

Critics like Grand Ayatollah Montazeri view these attempts to attain the position of "source of emulation" as a grave danger for the idea of the *marjaiyya*.

"Well, is this not degrading the Shiite doctrine of the 'source of emulation,' when the night after the death of Ayatollah Araki, they brought a few people in the street of the Society of Seminary Teachers, just like they do now, then three or four people came from Tehran and, in fact, (those who were mentioning him [as the source of emulation]) were not more than seven or eight people, and with hardly seven people, they wanted to make him a source of emulation, whereas he is not at the level of issuing edicts and being a source of emulation? Hence, they degraded the doctrine of the Shiite source of emulation; they made it childish, with a bunch of kids from [the Ministry of] 'Intelligence' that they brought."²⁹

One generation after the Islamic Revolution, scholars' titles, then, say more about their bearers' position in the political hierarchy of Iran than about their scholarship and their standing in the religious community or with their lay followers. In former times a scholar more or less automatically turned into an authority after having educated several generations of students. A scholar held in high regard rose to the top of this hierarchy without being officially granted a title. Since the Islamic Revolution, those who hold important political, not aca-

²⁸ *Iran Press Service*, 1/12/2000.

²⁹ *Keyhan*, London, 12/4/1997, p. 4.

demic, positions are granted a title. After Khomeyni's death, Khomeini was thus immediately declared the new Leader of the Revolution, and from that day on addressed as *ayatollah*.³⁰ This form of address was based on his new political position, not his learning. Hashemi Rafsanjani, the former Iranian President and influential head of the Expediency Council (*majles-e tashkhis-e maslehat-e nezam*), is also addressed as *ayatollah*, at least in the media controlled by the conservatives. As Mohammad Mojtahed Shabestari, a leading reformist theologian, points out:

“It may happen that someone today is known as *hojjat al-eslam*, that there are political changes during the next two years, and he becomes Ayatollah. Or the other way around . . . someone is Ayatollah today, and, in the course of two years, because of yet other political changes, nobody calls him Ayatollah anymore.”³¹

Divine Designation, Part One: The Power Only God Can Grant

Critics claim that by changing the constitution, Khomeyni has in effect abolished the *velayat-e faqih*.³² This may be true regarding the juridical and religious qualifications the *vali-ye faqih* was originally intended to have. But the idea that the holder of this rank and office was to be granted absolute power actually gained in importance with the changes made to the constitution: The “absolute guardianship of the Supreme Jurisconsult” (*velayat-e motlaqe-ye faqih*) was now inscribed into the constitution. No longer empowered with simple guardianship, the position of the “Supreme Jurisconsult” was rendered absolute. To

³⁰ Udo Steinbach, “Die ‘Zweite Islamische Republik’. Der Gottesstaat auf dem Weg in die Normalität,” *Außenpolitik* 41 i (1990), p. 84.

³¹ Mohammad M. Shabestari, personal communication to the author in December 1994.

³² This is how the Iranian oppositional freedom movement puts it. See Nehzat-e azadi, *Tafsil va tablil*, Tehran 1994. This attitude is shared by Mehrdad Haghayeghi, “Politics and Ideology in the Islamic Republic of Iran,” *Middle Eastern Studies* 29 i (1993), p. 38. Linda Walbridge maintains a different stance. She believes that Khomeyni “did not divide the role of marja and wilayat al-faqih; rather he redefined the type of person who should serve in this dual capacity.” Linda S. Walbridge, “The Counterreformation. Becoming a Marja in the Modern World,” in *The Most Learned of the Shia. The Institution of the Marja Taqlid*, ed. Linda S. Walbridge, Oxford 2001, p. 234.

compensate for the lack of religious authority, the officeholder was given greater political powers, expressed in the term *motlaq*, which in this context represents a novelty in Shiite jurisprudence. The *vali-ye faqih* may thus be only one legal scholar among many—and not even a high-ranking one. But his political power is absolute, based not on his religious authority, but solely on his appointment to office.

The leading Iranian reform theologian Mohsen Kadivar³³ (b. 1959) characterizes Khomeyni's early ideas concerning *velayat-e faqih*—as formulated in the constitution of 1979—as “the general appointive authority of jurists.” In contrast, he describes the new form of *velayat-e faqih*, as reflected in the revised constitution from 1989, as the “absolute appointive authority of the jurists.”³⁴ Kadivar stresses that the difference between the two refers mainly to political authority. The “absolute appointive authority of the jurists” gives the Supreme Jurisconsult absolute authority, elevating his decrees (*hokm-e hokumati*) over those of the *sharia*: “The orders of the Supreme Jurists, according to this thesis, must not only be obeyed as a religious duty; they must also prevail, in cases of contradiction, over the state law and the sacred law alike.”³⁵

Interestingly, Khamenei was not in favor of this reading of the *faqih's* power from the beginning. During a Friday Prayer in 1989 he said that the authority of Islamic government could only be exercised within the framework of the ordinances of the sacred law. Khomeyni reprimanded him for this attitude and stated that: “Government in the form of the God-given absolute mandate was the most important of the Divine commandments and has priority over all derivative Divine commandments . . . [It is] one of the primary commandments of

³³ Kadivar is involved in deconstructing *velayat-e faqih* by showing that there are other Shiite theories of the state. Nonetheless, Kadivar never made a frontal attack on *velayat-e faqih*. He rather demonstrated the historical evolution of Shiite political theory and concepts of the state, as well as the spectrum of different views on political rule in contemporary Shiite thought. Mohsen Kadivar, *Nazariyeha-ye donlat dar feqh-e shi'e*, Tehran 1998. Of equal importance is his book *Hokumat-e velai. Andishe-ye siyasi dar islam*, Tehran 1998. For further information about Kadivar see Farzin Vahdat, “Post-revolutionary Discourses of Mohammad Mojtahed Shabestari and Mohsen Kadivar. Reconciling the Terms of Mediated Subjectivity,” *Critique* 17 (2000), pp. 136–54.

³⁴ Quoted from Said Amir Arjomand, “The Reform Movement and the Debate on Modernity and Tradition in Contemporary Iran,” *International Journal of Middle East Studies* 34 iv (2002), p. 729.

³⁵ Kadivar, *Nazariyeha-ye donlat*, pp. 108–9. Quoted from Arjomand, “The Reform Movement,” p. 729.

Islam and has priority over all derivative commandments, even over prayer, fasting and pilgrimage to Mecca.”³⁶ Said Amir Arjomand called this “the new theocratic absolutism,” and, commenting on Khomeini’s subsequent change of mind, concluded: “Khomeini not only understood the principles of the new theocratic absolutism but propounded them.”³⁷

Ayatollah Mohammad Taqi Mesbah Yazdi (b. 1934) is one of Khomeini’s most fervent supporters, a member of the Council of Experts and the head of “The Imam Khomeini Education & Research Institute.”³⁸ He provided the basic argument to support Khomeini’s claim to supreme religious authority, writing several books on the question of *velayat-e faqih*. In his opinion, the term *molla* means that Khomeini stands above the constitution. As his right to leadership is absolute, he can claim far more extensive rights than those explicitly set out in the constitution.³⁹

But why does the leader have absolute rights? This is—according to Mesbah Yazdi—due to the fact that the *faqih* has been chosen by God himself. Only someone chosen by God has the right to rule.⁴⁰ Whether the people accept the *faqih* or not is irrelevant. He does not lose his legitimacy (*masbruiyyat*) if they refuse to offer him their recognition (*maqbuliyyat*).⁴¹ According to Mesbah Yazdi, the people may give the government some sort of, as he puts it, “objective reality,” but their approval is not required for it to be legitimate.⁴² “That is why, in the time of the Great Occultation, the government receives its legiti-

³⁶ Said Amir Arjomand, “Authority in Shiism and Constitutional Developments in the Islamic Republic of Iran,” in *The Twelver Shia in Modern Times. Religious Culture and Political History*, eds. Rainer Brunner and Werner Ende, Leiden 2001, p. 310.

³⁷ Arjomand, “Authority in Shiism,” p. 310.

³⁸ This institute, which is directly answerable to the *rahbar*, was originally founded to counter anti-Islamic propaganda. Information on the institute and its homepages is offered in Matthias Brückner, “Der *Ayatollah* im Netz – offizielle zwölferschiitische Websites,” *Orient* 4 (2002), pp. 537-58.

³⁹ Mohammad Taqi Mesbah Yazdi, *Velayat-e faqih*, Qom 1999, p. 27. Khomeini, too, enjoyed considerable extra-constitutional powers. See in detail Asghar Schirazi, *The Constitution of Iran. Politics and the State in the Islamic Republic*, tr. J. O’Kane, London 1997, pp. 62–71, 97. Johannes Reissner, “Der Imam und die Verfassung. Zur politischen und staatsrechtlichen Bedeutung der Direktive Imam Khomeinis vom 7. Januar 1988,” *Orient* 29 ii (1988), pp. 213–36.

⁴⁰ Mesbah Yazdi, *Velayat-e faqih*, p. 49.

⁴¹ *Ibid.*, p. 55.

⁴² *Ibid.*, *Velayat-e faqih*, p. 25.

macy from God and not from the people.”⁴³ A government that does not have the people’s support is still legitimate, as can be seen from the example of the fourth caliph, Ali: “Even though he was the only legitimate ruler, he had to wait for twenty-five years. The *mashru’iyat* remained valid nonetheless. The imams just could not realize their claim to authority.”⁴⁴

Mesbah Yazdi compares three different modes of legitimacy: popular will, the ethical values followed by the ruler, and rule by divine grace. In the Islamic Republic of Iran, the latter is the case. This, as Mesbah Yazdi tries to point out, provides an obvious advantage: while the people, if given a choice, might end up electing a bad government,⁴⁵ God will always choose the best one.⁴⁶ Mesbah Yazdi makes it clear that God is not arbitrary when choosing a *rahbar*. A *rahbar* must fulfill several prerequisites: he must know how to interpret the religious rulings (*ahkam*⁴⁷) and have reached the grade of *ijtihad*. He must be an honest and pious person thoroughly familiar with society’s problems and needs. He must also know how to move in international circles, and “be able to tell friends from enemies.”⁴⁸ While only the Prophet, Fatima, and the Imams are infallible (*masum*), the *rahbar* is *qarib be masum*—almost infallible, which is why he, coming closest to the fourteen Infallibles, has to lead society during the Great Occultation.⁴⁹ For this reason, all people are duty bound to obey him. It is the *faqih* who grants legitimacy to the actions of the people, not vice versa. A law is legitimate only because the *faqih* has approved it, not because it has been passed by a democratic assembly. According to Mesbah Yazdi, parliament has no function and can be immediately dissolved if the *faqih* is not satisfied with its work.⁵⁰

Following Khomeyni, Yazdi claims that the *rahbar* can suspend certain pillars of religion like the pilgrimage, but he cannot change the *usull*, the principles of religion. Were he to do so, his authority or the right of leadership would be taken from him (*velayat az u salb misha-*

⁴³ Ibid., p. 21.

⁴⁴ Ibid., pp. 27ff.

⁴⁵ Ibid., p. 14.

⁴⁶ Ibid., p. 48.

⁴⁷ Ibid., p. 54.

⁴⁸ Ibid., p. 51.

⁴⁹ Ibid., p. 56.

⁵⁰ Akbar Ganji, “Mashru’iyat, velayat, vekalat,” *Kiyan* 3 xiii (1993), p. 26. In this article Ganji also describes his own attitude towards *velayat-e faqih*.

vad).⁵¹ Mesbah Yazdi does not explicitly state how and by whom the *rahbar* would be divested of authority, but it can be safely assumed that it would be through God. The *rahbar* does not need to know, nor be able to do everything. Mesbah Yazdi's interpretation of the idea of *shura* (consultation among the believers) allows for the *rahbar* to consult specialists for advice; the final decision, however, is his alone to make, just like the Prophet.⁵² Since—in theory—the *rahbar* may err, Mesbah Yazdi allows for criticism—in principle. The conditions he sets, however, make criticism almost impossible. For example, it must not play into the enemy's hands.⁵³ He further believes that a large number of *mujtahids* and their opinions lead to chaos, maintaining that the head of state should be followed in all political and politico-religious issues. Even if another *mujtahid* is wiser, it is *haram*—forbidden by religion—to follow him in these issues. Only in personal matters may other *mujtahids* be chosen.⁵⁴

This is quite an unusual point of view, since the Shia commonly maintain that there can be several “sources of emulation” and everybody is free to choose the *marja* he prefers. But however unusual this position may be, Mesbah Yazdi is not alone in advocating it. Former Parliamentary President Nateq Nuri (who unsuccessfully ran for the presidency in 1997 for the conservatives) shares this opinion, stating that:

“It is necessary that different interpretations and points of view exist—but there has to be a focus on the *vali-ye amr's* [the leader's, K.A.] interpretation. If we really wish to know which point of view is true, we have to look at what the *vali-ye amr* has to say on the subject. I think it is wrong to say that so-and-so cannot be allowed to hold an opinion. By all means—let him hold an opinion. But there has to be a last word (*fasl al-khitab*). There is nothing to be said against there being different interpretations, but if we want to know the right one, we have to ask the leader. The last word on the different interpretations of Islam is the leader's privilege. If we do not go by that, the result will be deviation.”⁵⁵

⁵¹ Mesbah Yazdi, *Velayat-e faqih*, pp. 63f.

⁵² *Ibid.*, p. 64.

⁵³ *Ibid.*, pp. 69f.

⁵⁴ *Ibid.*, p. 68.

⁵⁵ *Resalat* 9/29/1999 as quoted in Akbar Ganji, *Talaqi-ye fashisti az din va hokumat*, Tehran 2000, p. 125.

Mesbah Yazdi also answered a question put forward by many critics: why is the *rahbar* not chosen for a limited period of time? According to him, the *rahbar* is to be the *noqte-ye thabet*, the fixed point of the system. Another question often raised is whether the *rahbar* may be corrupted by the fact that he cannot be voted out of office. Mesbah Yazdi counters this criticism by pointing out that this simply cannot happen in the case of the *rahbar*, just and pious as he is. Otherwise God would not have chosen him.⁵⁶

Mesbah Yazdi presents *velayat-e faqih* as the only Shiite form of government, and insists on this being an undisputed truth. According to him, there is general consensus that during the Great Occultation, the clerics, or rather their *primus inter pares*, has to take over as ruler.⁵⁷ He maintains that different opinions exist only in questions of minor importance, such as how broad the powers of the *rahbar* should be.⁵⁸ Mesbah Yazdi holds that even in the traditions of the Imams, the *rewaytt*, the *faqih* is named as the Mahdi's representative,⁵⁹ and he also interprets the Quran as proof for his argument, citing Quran 4:59, "O ye who believe! Obey God, and obey the apostle, and those charged with authority among you." Classical Shiite interpretation maintains that *ulu al-amr*, "those charged with authority," designates the Imams, since to obey them means to obey God. Obedience should, by definition, be based on the correct understanding of divine law: therefore, those obeyed should be infallible, and these are the Imams. It would have been contradictory of God to ask believers to follow a deviant path. That is why, according to Yazdi, they never laid claim to the right to lead the Shiite community. In contrast, the Sunni reformer, Muhammad Abduh (d. 1905), interpreted *ulu al-amr* as "princes, rulers, *ulama*, commanders of the soldiery and all chieftains and leaders to whom people resort for their needs and public interests."⁶⁰ At the same time, Abduh did not believe them to be infallible. Khomeyni took a similar stance, but limited those who are "charged with authority" in the time of the Great Occultation to the *ulama*. He never claimed that this opinion was the Shiite consensus. While endorsing

⁵⁶ Mesbah Yazdi, *Velayat-e faqih*, pp. 72f.

⁵⁷ Ibid., pp. 18, 21.

⁵⁸ Ibid., p. 62.

⁵⁹ Ibid., p. 61.

⁶⁰ Quoted from Faleh Abdul-Jabar, "The Genesis and Development of Marja'ism versus the State," in *Ayatollahs, Sufis and Ideologues. State, Religion and Social Movements in Iraq*, ed. Faleh Abdul-Jabar, London 2002, p. 66.

this argument, Mesbah Yazdi went a step further, anchoring it historically.⁶¹

What is remarkable in the context of Mesbah Yazdi's argumentation is the fact that in the Islamic Republic of Iran, the Supreme Jurisconsult is still elected by the Council of Experts—human beings after all. One could thus ask if it is not humans who in actual fact grant legitimacy to the *faqih*. But the conservatives have an answer in the ready: according to Mesbah Yazdi, the *faqih* is by no means *elected* by the Experts—he is *discovered* (*kashf*) by them, and this discovery is based on a message sent to them by God. Such an answer though cannot address further queries, such as why the appointment of someone who draws his legitimacy directly from God still has to be confirmed by the Council of Experts (as has been laid down in the Iranian constitution and as happened in 1998).⁶² Nor does this answer explain why—at least in theory—the Council of Experts has the power to dismiss him from office. How is this to be understood? That God has sent the Experts a message that He now wishes to take sovereignty away from this particular person? It is also difficult to understand why the people, who appear to have very little to say in this particular interpretation of the *velayat-e faqih*, should be granted such an important right as the election of the Council of Experts, an election open to all Iranians over eighteen. How is it possible that humans, supposedly incapable of choosing one outstanding *mujtahid* from among a few, should be able to identify—from hundreds of clerics—the eighty-six experts who are to make up the Council of Experts? Once more, Mesbah Yazdi has an answer. In response to being asked why elections are still held in Iran—for, after all, the leader is appointed by God—he said that: “In the times we are living in, and specifically since Western pressure is so strong, it is difficult to abolish a tradition like elections.”⁶³

⁶¹ Hamid Mavani draws the following conclusion on the proofs furnished by Khomeyni: “In general, the tradition reports put forth by Ayatollah Khomeini suffer from weak chains of transmission (*isnad*), and the meanings he imposes on the text (*matn*) of the hadith are not consistent with the way they were understood by earlier jurists.” Hamid Mavani, “Analysis of Khomeini’s Proofs for al-Wilaya al-Mutlaqa [sic] (Comprehensive Authority) of the Jurist,” in *The Most Learned of the Shia. The Institution of the Marja Taqlid*, ed. Linda S. Walbridge, Oxford 2001, p. 184.

⁶² *Süddeutsche Zeitung* 2/7/1998, p. 6.

⁶³ As quoted in Ganji, *Talaqi-ye fashisti*, p. 108.

Divine Designation, Part Two: Its Effects Upon the Islamic Republic's Political Reality

An incident in 2000 showed that Khamenei, too, subscribed to the point of view that the people and their vote are not really important, revealing in the process how he sought to compensate for his lack of religious authority by repeatedly stating the claim that the constitution enshrined his position as a leader with absolute rights. In August 2000, Parliament—at the time dominated by reformers—scheduled a debate on a new Press Law. Designed to protect journalists from judicial arbitrariness, this law was to establish a clear definition of those circumstances under which newspapers could be banned and journalists imprisoned. Compared to the prevailing situation, this law would have represented a marked improvement, or at the very least would have meant clearer regulations for determining what was forbidden and what not. However, Khamenei ensured that the bill was not even discussed: he had the President of Parliament Mehdi Karrubi read a letter asking Parliament to cancel any discussion about the bill. The bill, so the letter stated, was contrary to Islam and any debate on it unnecessary. This incident is revealing in two points: firstly, that Khamenei ignored the constitution—for the constitution does not grant the *faqih* the right to exercise his veto in such affairs, unless of course one interprets the term “absolute guardianship of Jurisconsult” to mean that he possesses this right. And that is the second point: during Khomeyni’s rule, Khamenei had already publicly declared that he considered the Supreme Jurisconsult to stand above the constitution, and that the constitution itself depended solely on his signature.⁶⁴ His conduct in this incident seems to have been directed towards making this very point. Otherwise, his behavior is difficult to explain: ultimately there was no need for him to embark on a course of direct confrontation with the parliament, since the Council of Guardians, ranking higher than the parliament, reviews all laws passed by parliament as to their compatibility with the Islamic character of the constitution. The Council of Guardians would have almost certainly rejected the bill. Maybe Khamenei took this step in order to demonstrate what *motlaq* really means—namely that the Supreme Jurisconsult indeed stands above the constitution and may veto any law. In January 2004, Khamenei himself commented upon this event and the role he played. He said: “The Leader of the Revolution’s power is God-

⁶⁴ Tellenbach, “Zur Änderung der Verfassung,” p. 52.

given”. Referring to the cancelled parliamentary debate, he said that the whole point of the system was that it is the Leader who is entrusted with the task of solving society’s problems. He was completely in his rights to act as he had because the Leader is chosen by God. “No rule is accepted in the Iranian democracy but the one transferred to the Leader by God.” And again: “God grants this rule to humans who are just and morally above all reproach, and accepted by the people.”⁶⁵ Possibly, it is this Divine designation which, in the eyes of his followers, gives him the right to bear the title of *marja*.

Divine Designation, Part Three: Power to the People? Montazeri’s Interpretation of *Velayat-e faqih*

The concept of *velayat-e faqih* has its critics and enemies. But it has its supporters as well, some of them offering quite different definitions of what *velayat-e faqih* entails. Some of the clerics in favor of the concept propagate a democratic reading. But how is it possible to arrive at such diverse definitions of the *faqih*’s rights and duties? All defenders of *velayat-e faqih* agree that God is the only sovereign. Opinions differ solely as to whom He has endowed with sovereignty until the Twelfth Imam’s return. The position we have dealt with till now maintains that God has endowed the *vali-ye faqih* alone with absolute sovereignty.

Grand Ayatollah Hoseyn Ali Montazeri advocates a different stance. As previously mentioned, Montazeri had been expected to succeed Khomeyni as *vali-ye faqih*. After his dismissal, Montazeri withdrew quietly to teaching and his studies. He was kept under house arrest for a long period before this was enforced somewhat less strictly in later years. In 1997, as President Mohammad Khatami came into office, Montazeri returned to the political stage. At the time, he warned the newly elected President in an open letter not to tolerate any interference in his policies by Khamenei just because Khamenei thought himself to be above the constitution.⁶⁶ Following this public statement, the letter Khomeyni had written to Montazeri to force his resignation eight years previously was read for the first time in Parliament, the aim being to discredit Montazeri. In this letter Khomeyni

⁶⁵ Bahman Nirumand, “Iran-Report,” ed. Heinrich Böll Stiftung 3 i (2004), p. 8.

⁶⁶ Hoseyn Ali Montazeri, “Letter to Mohammad Khatami,” *Payam-e hajer* 17 ccxxviii (1997), pp. 5–7.

had characterized Montazeri—whom he had always referred to as “the fruit of my life”—as too “simple minded” (*sade*), saying that he was a disgrace to the Revolution and Islam, and that he had become a nuisance. In 1989 however, the public had merely been told that Montazeri had been deposed “for the good of the system and of Islam.”⁶⁷

Montazeri reacted to this public slandering a few days later by launching an open attack on Khamenei in a speech that received much attention. On the occasion of the birthday of Imam Ali, Montazeri addressed a few followers and supporters at his home, but the speech was later widely circulated on tapes, and parts of it were published in the Iranian press, the internet and abroad.⁶⁸ In the speech Montazeri explained that the fathers of the Iranian constitution (and he had been one of them) had never envisaged the establishment of a system such as the one that existed in Iran today. The Supreme Jurisconsult had been meant to merely act as a supervisor. The idea was that he should stand guard over the three powers of the state and see to it that they did not violate the principles of Islam; he was not supposed to interfere in state affairs. He was meant to take action only if and when society was about to “deviate from the path of Islam.” Furthermore, the Supreme Jurisconsult was to be elected, and office was to be held for a specified term. It was beyond doubt, Montazeri claimed, that in 1979 a choice had been made for a republic, i.e. for a rule of, for, and by the people.⁶⁹

Montazeri and Mesbah Yazdi differ on the question of who has been given sovereignty and on the question of who chooses the *faqih*. According to Montazeri, it is not God. God has authorized not just the *faqih*, but the people in their entirety—and it is the people who

⁶⁷ The letter was reprinted in *Montazeri – az ouj ta forud*, special issue of the magazine *Arzeshba*, ed. Mohammad Reyshahri, Tehran 1998, p. 20. Reyshahri is a fierce opponent of Montazeri. The magazine is the political mouthpiece of his fraction. The letter was first published in *Abrar* 11/22/1997, p. 2.

⁶⁸ The speech was reprinted in *Montazeri – az ouj ta forud*, special issue of the magazine *Arzeshba*, ed. Mohammad Reyshahri, Tehran 1998, p. 44-48; *Keyban*, London, 12/4/1997, p. 4; www.dfn.org/Voices/iran/montazeri.com. Later he elaborated on this speech in more detail in his autobiography. The biography was first published in the internet under www.montazeri.com, an internet page that no longer exists (the author downloaded the autobiography in December 2000) and then, later, abroad: Hosayn Montazeri, *Khaterat-e Ayatollah Montazeri*, Essen ²2001.

⁶⁹ *Montazeri – az ouj ta forud*, special issue of the magazine *Arzeshba*, ed. Mohammad Reyshahri, Tehran 1998, pp. 44-48.

then choose the *faqih*. From this it follows that there has to be a social contract between the *faqih* and the people. As he puts it:

“In reality, there is a social contract between the people and the *vali-ye faqih*, and the constitution was drafted on that basis. Accordingly, his term may be limited and temporary, like that of the president or a member of parliament. And given that the *vali-ye faqih* is accorded responsibility to the people, he is not infallible. He must accept criticism and be responsible for his actions.”⁷⁰

Montazeri accused Khamenei of having twisted the constitution’s original intentions. At no time, he stated, was it envisaged that the *vali-ye faqih* should stand above the constitution. Montazeri called what Khamenei established in Iran a dictatorship of the Supreme Jurisconsult. Moreover, Montazeri felt that the entire concept of *velayat-e faqih* had in the meantime lost its *raison d’être*, since the original idea was that the most learned of all scholars was to watch over the state. But through the “new definition” of the Supreme Jurisconsult’s function, his office had become an institution uncannily resembling the Presidency. How, Montazeri asked, does the holder of this office differ in his qualifications from the President? Both have to be competent and possess a clear political vision. But what is the use of this new office if there is no difference to that of the President? Naturally, for Montazeri, there can be no difference, since he does not accept the reasoning of Khamenei’s followers: that the Supreme Jurisconsult has divine legitimacy. Instead Montazeri says that, according to Shiite jurisdiction, the Twelve Imams were chosen by God—they alone, and no one else. Logically enough, no other person could lay claim to have divine legitimation.⁷¹

Criticism of the positions taken by Mesbah Yazdi and Khamenei is becoming more widespread, even at times from unexpected quarters. Grand Ayatollah Ahmad Bigdeli Azari Qomi (d. 1999), for example, was one of Montazeri’s fiercest opponents. He was a member of the Council of Experts which voted Khamenei into the office of Supreme Jurisconsult, and, as editor of the newspaper *Resalat*, was one of the most vocal leaders of the group supporting Khamenei’s claim to the office of *vali-ye faqih* in 1989. In numerous articles he defended Khamenei against those who pointed out the latter’s lack of qualifica-

⁷⁰ www.dfn.org/voices/iran/montazeri.htm (6/13/2002).

⁷¹ www.dfn.org/voices/iran/montazeri.htm (6/13/2002).

tions. Moreover, Azari Qomi was of the opinion that Khamenei should hold absolute power. That he was not a “source of emulation” should not be interpreted to mean that his power could be limited. Azari Qomi went so far as to state that even Khomeyni’s decrees needed Khamenei’s approval in order to still be valid after his death.⁷² (Others, such as the defenders of the Rushdie Fatwa, maintained that everything Khomeyni said must be respected forever; although fatwas are usually no longer valid after the death of the *marja* who originally issued them.) In 1996, however, Azari Qomi publicly withdrew his support for Khamenei, stating that he thought him unfit for the office of *marja-e taqlid*.⁷³ It is likely that Khamenei’s attempts to style himself *marja* caused this change of mind; such self-aggrandizement finds its critics even among Khamenei’s former supporters. Shortly afterwards, Azari Qomi again criticized Khamenei, going so far as to suggest that Khamenei should limit his activities to politics and elect Montazeri to be his deputy in religious matters. If politics were not to change substantially, he stated, the people “will dump us in history’s dustbin.”⁷⁴

The subject of the Supreme Jurisconsult’s range of power is widely discussed. In June 2003, 148 members of the Iranian Parliament signed a declaration calling Khamenei’s autocratic leadership and his claim to be ruling in God’s name (and hence claiming to be infallible) an expression of unbelief (*kufr*). The people, the declaration stated, have the right to judge their leaders’ actions, to criticize them, and to dismiss them “if they are not content with them.” Introducing “divine and absolute power” inspiring dread among the population was denounced as an “oppression of human dignity.”⁷⁵

Uncertain Authority and the Consequences

One thing becomes clear when analyzing the different definitions of the *faqih*’s rights and duties and his legitimacy. Besides the complete abolition of *velayat-e faqih*, which the supporters of democracy are demanding more openly than before, there exists another option, at least in theory: to turn the institution of the *velayat-e faqih* into a more democratic one. While this may even have been the original intention

⁷² Schirazi, *The Constitution of Iran*, p. 78.

⁷³ Buchta, “Ein Haus mit vielen Herren,” p. 59.

⁷⁴ The Iran Brief: www.iran.org/tib/public/4101.htm. 11/29/1997.

⁷⁵ Bahman Nirumand, “Iran-Report,” ed. Heinrich Böll Stiftung, 2 vi (2003), p. 4.

of the fathers of the constitution, as Montazeri claims, Khamenei claimed God-given authority, and criticism of him is even called and punished as an “offense against the holy religious values” (*ebanat be moqaddasat-e dini*).⁷⁶ Khamenei’s lack of religio-juridical authority has probably forced him to look for a different mode of legitimation. Khamenei might thus be the only *marja* in Shiite history to have become a “source of emulation” due to his alleged divine designation and not because of his religious authority and knowledge of Islamic law. With this, the concept of *marjaiyya* has undergone a fundamental change.

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⁷⁶ Ebrahim Yazdi, the leader of the Liberation Movement was charged of having insulted Ali Khamenei in December 1997, his crime being described as an “offense against the holy religious values” (*ebanat be moqaddasat-e dini*). See *Frankfurter Allgemeine Zeitung* 12/29/1997, p. 12.

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