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From *ijtihad* to *wilayat-i faqih*.
The Evolving of the Shi'ite Legal Authority to Political Power

by
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In November 2002 an Iranian professor of history, Hashim Aghajari, a veteran of the Iran-Iraq war, was sentenced to death by the Islamic revolutionary court in Hamadan among other counts for questioning the practice of blind “emulating/following” (*taqlid*) of the *mujtahids* in matters of belief and practice. His sentencing led to several days of widespread university protests fueled by Aghajari’s refusal to appeal his death sentence. What incensed the Iranian court which accused him of blasphemy was that, by implication, Aghajari was denying the “authority/guardianship of the jurist” (Persian, *wilayat-i faqih*; Arabic, *al-wilaya al-faqih*), the very founding principal of the Islamic Republic. Aghajari’s objection aimed not merely at the practice of *taqlid*, but the legitimacy (or their lack of) of the “guardian jurist” (*wali-yi faqih*), the “supreme leader” of the Islamic Republic. This new anti-clerical quest for Islamic modernity naturally steered much interest among younger generations of Iranians.

Aghajari’s speech commemorated ‘Ali Shari’ati, the renowned revolutionary reformist. Invoking Shari’ati’s notion of “Islamic Protestantism” as the only way to liberate the society from the impasse of the “traditional Islam,” Aghajari was striving to arrive at a new historical understanding of the Shi’ite heritage. Though still grounded in the Qur’an and *hadith*, this new reading was engaged more deeply with modernity, human rights and plurality. Aghajari called for social justice and democracy in economy and in politics though he implicitly distanced himself from Shari’ati’s firebrand revolutionary rhetoric. He does not remain untouched by Shari’ati’s exhortations to be the prophet of Protestant Islam, a claim made by a number of Islamic reformers including the celebrated Jamal al-Din “Afghani,” the Iranian pan-Islamic activist of the 19th century. Yet he goes so far as criticizing the Shi’ite establishment for its culture of condescension especially in the exercise of *ijtihad*.

The people are not monkeys who merely imitate. The pupil understands and then acts, and then tries to expand his own understanding, so someday he will not need the teacher. He can himself directly look up (the sources) and deduct and form an opinion. The relationship that the traditional institution (i.e. the clerical establishment) seeks is one of master and the follower; the master remains master and the follower remains follower. Forever these shackles straps around his neck. The relationship of the (real) scholar (*`alim*) with people is a critical one. Since he has expert knowledge, we listen to him as a scholar. Whenever we find something objectionable, we criticize, we debate. He is not a saintly celestial being to be treated by us as a divine figure. Of course this class (i.e. the clergy) first turned the infallible (Shi'ite) Imams to divine figures so that they themselves could pose as divine representatives of the Imams.¹

Such critique of the abiding authority of *ijtihad* and that of the so-called “source of emulation” (*marja'-i taqlid*) inevitably bring to light the much debated issue of legal authority in Shi'ite Islam and, more specifically, the problem of institutionalization of *ijtihad*. He obviously does not address openly the *wilayat-i faqih*, but his reference to the “imam” in the above passage, as in other allusions sprinkled throughout his speech, signifies the obvious to his sensitive audience. He deliberately seems to have touched on a sore point since the doctrine of the “guardianship of the jurists,” it can be argued, stands on shaky legal grounds. Shi'ism never historically or institutionally made the necessary leap from the loosely defined *ijtihad* to a centralized *marja'iyā*, let alone ever develop the theoretical ground for creating a universal judicial authority.

Before the time of Ayatollah Khomeini, Shi'i legal thought never did seriously engage in the sphere of public law and consequently never articulated a coherent theory of government. Even in the safety of the *madrassa*, Shi'ite law remained entirely preoccupied with the articulation of civil and private law as practiced in the *mujtahid*-run civil courts. Such practice of *ijtihad* was never systematized or subjected to clear and universally accepted norms, one may venture to say, almost by choice. The Shi'ite law on which the *mujtahids* relied remained a matter of interpretation and scholastic scrutiny largely within the *madrassa* environment rather than through the

practice of the law. Throughout the Safavid and the early Qajar periods (16th to 19th centuries) Shi'ite law acquired a remarkable level of sophistication, especially in the theoretical field of the "roots of jurisprudence" (*usul al-fiqh*). Yet both in the study of the rudiments (*furu*) and in the methodology of *usul al-fiqh* Shi'ite scholarship resisted systematic codification beyond what was established by earlier scholars largely between the 10th and 14th centuries.

Even the "emergence" of the status of the "supreme exemplar" (*marja'-i taqlid*, lit. the source of emulation) in the 19th century remained largely an informal practice. No set of objective standards for designating such a leadership ever developed and no specific legal privileges were arrogated to this office. As late as the middle of the 20th century, the *marja'iyat* was largely aimed at addressing the needs for a communal leadership rather than a supreme legal authority. No *marja'* before Ayatullah Burujerdi ever claimed his legal opinions to be universally binding. Nor any of the *marja's* claimed to be standing at the apex of a judicial hierarchy or was accepted as such by the *mujtahids* or by the community at large. Whenever they effectively exercised their legal power, as in the tobacco rebellion of 1890-91 or during the Constitutional Revolution of 1906-1911 or the banning of the drinking of Pepsi Cola in the 1950s, the *marja's* relied on their popularity and prestige rather than any legal precept. The three preconditions for a *marja'*, being the most learned (*a'lam*), the most judicious (*a'dal*), and the most pious (*atqa*), were qualities barely measurable by legal or academic standards. No institutional procedure was ever set to determine such preconditions. What in reality determined success of a *marja'*, or for that matter any *mujtahid*, was his popularity and the size of his follower constituency (or congregation). The question thus remains as to what process, historical and legal, transformed this informal and democratically chaotic form of defuse judicial leadership into a binding, all-embracing, and authoritative office of the *wilayat-i faqih* with claim over the judicial and political authority.

***Ijtihad* and the Usuli interpretation of judicial authority**

As early as the 10th century the so-called 12th Shi'ite (*Ithna 'Ashari*) jurists recognized the Occultation (*ghayba*) of the 12th Imam, the state of his invisible (but directly inaccessible) existence in the physical world, as the chief postulate for denouncing any form of temporal power in the absence of the Imam as inherently unjust and therefore illegitimate. Only the return of

the Imam in an undetermined moment in future, it was believed, could establish on earth the ultimate values of justice and legitimate rule. This absolutist messianic belief in the Imam's eventual establishing of a utopian perfect order has often been viewed as the chief obstacle on the way of articulating a legal public space in Shi'ism. The same rationale also barred in theory any legitimate collaboration between the jurists and the state. Every government was in theory seen as inherently oppressive. The same principle of avoiding political collaboration was conducive to the flourishing of the Shi'ite study of *hadith*, as means of emulating the models of the Prophet and the Imams, and early development of jurisprudence (*fiqh*) focusing on civil and contractual law as well as on devotional acts and obligations.

In practice, however, the quietist tendency among the Shi'ite jurists, as opposed to powerful messianic trends throughout the Shi'ite past, encouraged compliance and even collaboration with the "unjust" and "tyrannical" (*ja'ir*) state especially if and when the state was accommodating the Shi'is. This *de facto* acceptance of the temporal power, needless to say, was in full agreement with the ancient Persian notion of the "sisterhood" of the religious and the state institutions, a interdependency perceived to be essential for the endurance of both institutions and the stability of the social order against the corrupting influence of "bad religion" (i.e., the antinomian, often messianic, alternatives to legalistic Shi'ism). While the state maintained peace and order, upheld the *shari'a*, defended the domain, and guarded the jurists' vested interests, the jurists were in turn expected to maintain good relations with the state, and even serve in the state-controlled judiciary.

Already by the 14th century the Shi'ite jurists developed an elaborate legal system of private law based on *ijtihad*, the exercise of logical reasoning by utilizing the sources of the law to form qualified legal opinion within a specific timeframe. The exercise of *ijtihad* in turn led to the development of an elaborate methodology of jurisprudence, the science of the *usul al-fiqh*. Some of the best legal minds articulated complex linguistic debates on legal semantics and phenomenological discussions on the authority of the text. Yet oddly enough, *usul al-fiqh* avoided systematic debate on *ijtihad*, such as the *mujtahids'* qualifications and institutional hierarchy, and failed to discuss such seemingly mundane issues as the *madrasa* curriculum. Nor did it address the inconsistencies and ambiguities of the Islamic law or question the rationale behind its archaic categorization.

Even the establishment of the Safavid state (1501-1736) and declaration of Shi'ism as its official creed (in obvious contrast to the rival Ottoman empire's expressed upholding of "orthodox" Sunni Islam) did not substantially alter the *mujtahids* resistance to institution development. This in spite of the Safavid dynasty's presumed sacred lineage, its active sponsorship of the clerical establishment and heavy patronage of the teaching circles. The immigrant jurists from the Arab Shi'ites communities of Jabal 'Amil (in today's Syria and Lebanon), Qatif and Bahrain in northern Arabia and the Persian Gulf, and Najaf and Hilla in southern Iraq were incorporated into the judiciary of the Safavid Empire. These *mujtahids* and their Iranian counterparts, many being converts from Sunnism, considered the Safavid shahs as legitimate defenders of the faith and their empire as the guarded Shi'ite domain. For the "learned" (*ulama*) community it was therefore permissible to assume judicial offices, as majority did, collect alms and the so called the "share of the Imam," and even to set the congregational Friday prayer which considered by majority of Shi'ite jurists as impermissible in the absence of the Imam of the Age.

The jurists' reluctance in this period to solidify their gains by implementing a judicial leadership independent from the state is not surprising. Their reluctance to better define the boundaries of *ijtihad* was in part because the Safavid rulers' successfully recruited the *mujtahids* as state functionaries. Although the office of *shaykh al-Islam* was held by a high-ranking jurist, this was not understood to be a legal supervision over the entire judicial community. Nor did it mean administrative or financial control, a task that the Safavid state consistently conferred on a non-clerical bureaucrat with the title of *sadr* (i.e., the chief officer). Moreover, the Safavids in the late 17th century did not hesitate to patronize the alternative Akhbari school which in contradistinction to the Usuli school rejected *ijtihad* and its logical rationalization. The debate between the two schools in the late 17th and throughout the 18th centuries weakened the development of *usul al-fiqh* as a discretionary methodology and favored instead a wholesale and uncritical validation of all the *hadith* as sources of the law. More specifically, all reports (*akhbar*) from diverse Shi'ite *hadith* sources attributed to the Prophet *and* the Imams, were considered as authentic, with little discretion for their historical validity. The Akhbari resistance to independent reasoning was congruent with the Safavid state's aversion to allow the emergence of an independent *mujtahid*-dominated judiciary.

After the collapse of the Safavid Empire in 1736 and the ensuing political instability, Usulism reemerged as the predominant legal school in the late 18th and early 19th century. In the early decades of the 19th century the Usuli jurists made evident gains in socio-economic and educational areas hence laying the foundation for a clerical establishment that continued with little interruption up to the present. They monopolized the *madrāsas'* education and the pulpit of the mosques, controlled charitable endowments (*awqāf*), and posed as the only legitimate recipient of religious taxes. They developed amicable though somewhat distant relations with the early rulers of the Qajar dynasty (1785-1925), a mutually beneficial relation that brought about the golden age of Usuli *ijtihād*. The growth of religious circles first in Najaf, where Akhbarism was soundly defeated, and later in the Iranian cities such as Isfahan and Qum was supported with a large student body and with a closely-knit network of master-pupil patronage. Impressive number of legal works were produced both on the specifics of the law (*furu*) and on the *usul al-fiqh* with implicit emphasis on the role of the *mujtahids* not only as legal scholars but judges and social mediators. The growth of congregations in mosques also strengthened jurists' ties with social groups in search of legal support, most noticeably the merchants of the bazaar who backed the *mujtahids* and financed their teaching circles in exchange for legal security and representation.

Yet with all the success in developing a semi-independent legal network and a solid lay constituency, the jurists of the Qajar period did not seek to reconstruct the theory of *ijtihād* and its application to public law. Despite occasional "turf wars" with the state over privilege and sphere of influence, or later in defiance of the state's Westernizing policies, they continued to honor the dichotomy of the religious law (*shar'*), as it concerned the jurists, versus the customary law (*'urf*), as exercised by the state. Neither side, the jurists or the state (at least before the rise of the European-inspired reforms) attempted to define each of these two spheres of *shar'* and *'urf* or demarcate their boundaries by means of codification, let alone to breach the informal boundaries between them. The *usul al-fiqh* remained essentially concerned with its arcane debates on the legal method and legal sources. Voluminous works, commentaries and glosses on commentaries were produced by the Usuli scholars on intricate details of semantics and epistemology. Yet the *mujtahids* simply did not see the need for a centralized corporate identity or for disturbing the delicate balance with the state upon which they continuously negotiated their power. The state in turn preferred ambiguity whereby through consent and coercion it hoped to persuade the jurists to

comply with the state's otherwise waning power and prestige. By the end of the century the jurists were more than ever isolated in their world of *madrassa* and private courts. Accordingly, the curriculum of the seminaries was substantially truncated to focus solely on legal studies at the expense of non-religious and especially non-legal topics. Even such traditional fields as mathematics, astronomy, and philosophy were no longer part of the jurists' general education.

Voices of protest to the jurists' monopolies and their intellectual petrification further moved the *mujtahids* toward conservatism and added to their distaste for new approaches. Most significantly, the messianic Babi movement in the middle decades of the century questioned the very legitimacy of the clerical community, its theoretical premises, educational methods, and legal practices. The Babi religion (later to be transformed into the Baha'i faith) denied the long-held jurist position that they collectively represent the Imam of the Age in Occultation. The Babi apocalyptic movement with growing popularity not only sought leadership in the new "Imam of the Age," but declared the end of the historical cycle of Islamic *shari'a* by ushering a new cycle of prophetic manifestation. In response to the Babi challenge, the jurists community closed ranks and came closer to full collaboration with the state in crushing the Babi revolution. In no other area the jurists heeded the Babi call for fundamental reform though in longer run the clerical community did produce a new form of communal leadership. The status of the *marja'* that was first recognized for Shaykh Murtaza Ansari in the late 1850s, not surprisingly coincided with the growth of the Babi clandestine anti-clerical subversion. His emergence as the "supreme exemplar" no doubt mirrored the public desire for a clerical leadership committed to higher standards of morality, learning, and social justice. Ansari came to represent these values for a growing constituency of seminarians in the *madrasas* and among the lay followers.

The idea of *marja'iyah* as a communal leadership with an increasing claim over political process continued in the second half of the century and through the Constitutional Revolution (1906-1911). Perhaps the height of such politicized *marja'iyah* came with Mirza Hasan Shirazi, the influential jurist and teacher whose access to funds and his ever-growing teaching circle placed him ahead of his competitors as the most widely recognized *marja'*. His general ban on the use of tobacco during the Regie protest of 1890-91 for the first time demonstrated the *marja'*'s power against the state and European imperial monopolies. The channeling of public discontent into political discourse is

even more evident during the Constitutional Revolution. Several mujtahids, simultaneously recognized as *marja`*s, appealed to diverse constituencies with contesting political agendas. The breakdown of a united leadership during this period of political reform and Western-style secular democracy demonstrated the crucial role of the jurists' followers in promoting the cause of *mujtahids* on both sides of the constitutional debate. The greater polarization of the clergy especially over the issues of secular judiciary and civil liberties vouched for this multiplicity of leadership. A number of influential jurists who sided against a Western-style constitution and in favor of a Shari`a-based alternative were defeated and lost constituency and prestige, even their lives.

From *marja`iya* to *wilayat-i faqih*

ONLY IN THE LATTER PART OF THE 20th century do we witness the gradual shift back toward a centralized *marja`iyya* under Ayatollah Husayn Burujirdi. He should be viewed as the first to hold a united leadership not only in the management of the Qum seminaries, collection of the religious taxes and distribution, but a certain degree of legal authority over the clerical community. It goes without saying that the "emergence" of this form of centralized *marja`iya* was a belated, albeit inevitable, response to the state's intrusion into the judicial domain. The rise of the Pahlavi secular autocracy from the middle of the 1920s precipitated the growth of modern educational institutions. It abolished the *mujtahids'* civil courts and replaced them with a state-controlled judiciary. The state regulating the use of charitable endowments, and similar measures undermined the *'ulama's* social status and affected their economic influence. The growth of the secularized or semi-secularized middle classes and popularity of a variety of religious and ideological challenges, from the Baha'i faith to Marxism and Western-style modernity, persuaded the demoralized and shrunken clerical community to try to reorganize the *madrassa* and to solidify its network at the national level. Most importantly, the jurists gradually moved away from the state-*'ulama* alliance that was founded on the ancient principle of preserving social equilibrium through guarded collaboration. In due course the new *marja`iya* reconstituted its base not only in the bazaar community, where it was traditionally strong, but among a new class of urban and urbanized poor. They offered a pool for clerical recruitment and an enthusiastic mosque congregation.

Such greater solidarity and group identity however did not result in reconsideration of the Shi'ite legal thought or any serious attempt to institutionalize the informal *marja'iyā* leadership. Study of *fiqh* in the seminaries of Najaf, Qum and elsewhere remained almost entirely loyal to the arcane precepts and practices of the Shi'ite law and its obsessive preoccupation with devotional acts (*'ibadat*) and contracts (*'uqud*). The striking persistence of legal archaism among the Shi'ite jurists can be explained in part by inherent conservatism of the legal curriculum and in part by isolation from the society's new secular discourse. Left out of the new state-run judiciary, the Shi'ite teaching circles in Najaf and Qum made almost no attempt to address new issues of public law or even offer a modern reading of the old legal texts. The so-called *hawzas* continued to operate along the informal teacher-pupil patronage and produce growing number of jurists and/or preachers in need of new congregations.

A number of *marja's* that "emerged" after the death of Burujirdi in 1960, including Ayatollah Khomeini, were no doubt more organized in their teaching and charitable operations. Yet there was no attempt in the clerical circles to revisit the nature and conditions of *marja'iyā*, let alone arrive at a consensus about criteria for such leadership or the hierarchy. As much as the lay constituency of the *marja'as* grew and the funding sources improved, no equivalent of an ecclesiastical hierarchy emerged even though there existed a fairly coherent network of the *'ulama* throughout Iran, southern Iraq and Lebanon.

The defuse *marja'iyā* leadership of this period relied heavily on both the lay and the clerical "followers." To mark their place in a complex game of prestige and popularity the *marja's* depended on their followers for higher standing. Naturally, at times they were bound by their whims and wishes. As Mutraza Mutahhari, a prominent follower of Khomeini and a leader of the future Islamic revolution pointed out in the early 1960's, in this popularity contest no *marja`* could survive without his constituency's financial and moral backing. In a conference organized by some religious modernists on the theme of *marja'iyat*, the largely modernists, among them Mahdi Bazargan, joined together with a new generation of activist clerics, such as Mutahhari, to urge the *marja's* to bring some order into the notoriously chaotic world of Shi'i clerical leadership.

The greater politicization of the clerical community, and especially the clerical clique around Ayatollah Khomeini from mid-1960s, responded positively to this call. Among the *marja's* of Qum and Najaf, Khomeini represented the most radical political position. His open anti-Pahlavi platform caused as much trouble for him as it gained him popularity especially among the lower and middle rank *'ulama* who were disillusioned with other *marja's* and their collaboration with the shah's regime. Modernity thus came to the clerical establishment with political radicalization rather than a fundamental revision of the Shi'ite legal system and reconsideration of its curriculum and judicial premises. Even prominent students of Khomeini such as Husain 'Ali Muntazari and Mutaza Mutahhari seldom called for reconsideration of the Islamic legal tradition or new teaching methods or adopting a modern legal philosophy. For them legal reform equaled succumbing to an alien secular modernity introduced by a colonizing and corrupting West.

Majority of the new seminarians and clerical followers of Khomeini, came from among the underprivileged in small towns and villages. Increasingly, they were drawn in to political dissent and political activism in the late 1960s and '70s because they resented the wealth and privilege of the secularized urban middle classes. Equally, they resented and the state's judiciary for supplanting the old and decentralized jurists' courts. They also questioned subservience of the Pahlavi state. Khomeini and his prominent students capitalized on these discontents to promote his leadership as superior to other leaders not necessarily because of Khomeini's juristic qualifications, which were meager, but because of his uncompromising political stance.

In the tense environment of confrontation with the shah and his police apparatus, this message of political dissent was better transmitted to the lay people by recalling the Shi'ite narratives of defiance and self-sacrifice, as in the commemoration of the martyrdom of 'Ali and that of his son, Husayn ibn 'Ali. Laboring over the obscure and mostly redundant details of Shi'ite law and the theoretical intricacies of *usul al-fiqh* appeared secondary if not entirely obsolete. Even Mutahhari, the most promising intellectual product of Qum in the 1970s preferred to delve into Western philosophy or Islamic reformism and revolutionary rhetoric rather than adopting a novel approach in *fiqh* and *usul*.

In a climate of state-driven secular modernity versus the *'ulama's* legal redundancy, Khomeini's gradual tilt in the 1970s toward the doctrine of

juridical sovereignty was the solution to the prolonged problem of unregulated leadership. He borrowed from the Sunni reformist milieu the notion of the Islamic government, long debated by the likes of Rashid Rida and later Abul 'Ala Maududi in order to set the legal ground for what he defined as the "authority of the jurist" (*wilayat-i faqih*). More a teacher of Greco-Islamic philosophy than a dabbler in jurisprudence, Khomeini was the right candidate to break through the inhibiting cobweb of juristic tedium. His theory had an unmistakable mystico-philosophical core that was colored by Shi'ite legal trappings. On a personal level it was the work of a reluctant jurist who was anxious to overcome his *marja'* rivals through the philosophical backdoor of charismatic leadership.

The concept of *wilaya* upon which Khomeini propounded his theory is a complex and theologically charged one. Variably read as *wilaya* (authority, guardianship) and *walaya* (patron-client bond of friendship), for Shi'ites it was the hereditary status primarily arrogated to 'Ali and his Imam descendants as true successors to the Prophet; a status of sovereignty over his true believers. In Sufism *wilaya* implied friendship with God, a saintly status of proximity to Truth, even according to some on par with prophecy. For the Shi'ite jurists *wilaya* was a purely legal term denoting the state of guardianship often assumed by the jurist over the legal minor (*saghii*) and mentally retarded (*mahjur*), hence *wilaya al-faqih*. Although in theory the guardianship of the jurist could be extended to the public sphere, in reality no jurist of any substance did consider as viable the jurist's "authority to rule" (*wilaya al-hukm*). In the absence of the Occulted Imam, who is the just and legitimate enforcer of the *wilaya*, few jurists even condoned the "authority to judge" (*wilaya al-qada*) beyond mere issuance of *fatwas*, but without the necessary power to enforce them. The notion of "general deputyship" (*niyaba 'amma*) on behalf of the Imam, as claimed by some jurists in the Safavid and early Qajar periods, was never extended to the authority to govern, though it did reserve for the jurist a certain prerogatives, such as declaring *jihad* under the auspices of the state.

In the latter part of the 20th century however the prevalence of the idea of *marja'iyah* seldom allowed the doctrine of collective deputyship of the *mujtahids* to be considered. The semantic shift in referring to the jurists also indicate a change in focus. Khomeini's use of *faqih* (jurist), rather than *mujtahid* or *marja'*, in his own articulation of "guardianship" underlined sheer proficiency in *fiqh* rather than any acquired clerical status based on

vague qualifications. His *wilaya*, in theory at least, could be extended to any jurist and not the one that is publicly recognized as the most important *marja'* or even a *mujtahid*. Such definition no doubt served Khomeini well while languishing in the exile of Najaf away from his constituency.

As defined by Khomeini, the doctrine of the “guardianship of the jurist” was applicable to public law as well as civil law. In the absence of the Hidden Imam, he argued, the jurist presents the least oppressive form of authority because contrary to temporal rule it is founded on Islamic principles. The jurist is the most qualified in matters of law, which according to Khomeini is inherently superior to any secular body of law, and he is obliged by the same Islamic legal principals to uphold and enforce it. It is therefore incumbent upon the jurist, as an “individual duty” to strive for acquiring political authority in order to form the Islamic government. Khomeini’s doctrine was a revolutionary interpretation of the authority of the jurist even though he tried hard in his *wilayat-i faqih* (later *Hukumat-i Islami*) to fortify his theory with precedent from classical legal texts and citations from such Usulis jurists as the 19th century Mulla Ahmad Naraqī. No Shi’ite jurist before him ever extended the very limited application of legal *wilaya* to include public affairs, let alone, assuming of political power.

Legal articulations aside, Khomeini’s doctrine was driven by the requirements of his constituency. Not only a young generation of his students and followers defied the legitimacy of the Pahlavi shah, and whatever he stood for, but they aspired coherence and unanimity within clerical ranks. The *wilayat-i faqih* promised not only the ascendancy of the jurists to positions of political power but a virtual end to clerical resistance to institutionalization. The rise of the *wilayat-i faqih* as an institution harbinger the eclipse of the *marja'iyā* and all the ambiguity that was inherent in qualities of the *mujtahid*.

Assuming political power by Khomeini and his *'ulama* backers, which came with the revolution of 1979, inevitably imposed a bureaucratic regime on the Shi’ite *'ulama* more rigid than the chaotic *madrassa* system of Najaf and Qum ever did. Even the honorary clerical titles, inflated over time, gained new hierarchical connotation. While *ayatollah* (a sign of God) applied to the higher clerical figures, the *hujjat al-Islam* (a proof of Islam) signified the rank below. The highest status however was Khomeini’s own. As the “guardian jurist” (*wali-yi faqih*) he assumed the title of *imam*, first time ever used in the history of Shi’ism in a context other than the twelve Imams. Although the office of guardian jurist was considered the one and the same as the “deputy

of the imam” (*na’ib-i imam*), more in vogue in the 19th century, in practice a consensus was reached on the universal and sole reference of the term *imam* to the founder of the Islamic Republic, hence “*Imam* Khomeini.”

The constitutional authority and popular aura that Khomeini acquired as the guardian jurist, denoted not only a desire for rationalization of the clerical community but also a drive toward clerical absolutism. The legitimacy and the mandate of the guardian jurist does not derive from his constituency of followers, as in the case of the *marja’*, but from a sublime source. Despite the seemingly democratic trappings of the constitution of the Islamic Republic, the guardian jurist is answerable to no source but God, even though he is appointed by a Council of the Experts (*Majlis-i Khubragan*), a select body of high-ranking *’ulama* (and presumably impeachable by the same body). The range of the guardian’s institutional authority is vast and universally abiding even though the Islamic Consultative Council (*Majlis-i Shawra-yi Islami*, i.e., the parliament) tends to modify his ultimate power. Similarly, articles of the Constitution guaranteeing the inalienable rights and freedoms of the individual contradict with the authoritarian power of the guardian jurist. Khomeini’s charismatic aura in early years of the revolution glossed over the obvious contradiction in the constitution between democratic freedoms and the totalitarian power of the guardian jurist. In post-Khomeini era, and twenty-three years after the revolution, the contrast is glaring. The “supreme leader” (*rahbar*) as Khomeini’s successor, Ayatollah ’Ali Khamanei is recognized in today’s Islamic Republic, insists on these constitutional prerogatives to control, and if necessary quell, the legislative, the executive and the judicial branches of the government and remain unaccountable to any elected body.

The authoritarian nature of *wilayat-i faqih* is indebted to the persistent culture of autocracy which the revolution denounced in theory but perpetuated in practice. But it also was reflective of the Shi’ite judicial community’s failure to rethink the precepts of the Shi’ite law and their applicability to pluralist values. The doctrine of the “guardianship of the jurist” was informed above all by a Shi’ite legal mindset that essentially was alien to the modern notions of plurality and democratic leadership even though, ironically, Shi’ite *ijtihad* and *marja’iyya* operated on some form of popular representation. It was also colored, no doubt, by Khomeini’s own mystical propensity for classical Sufism and specifically Ibn ’Arabi’s theory of *wilaya*. Moreover, what historically informed “guardianship,” as apparent in the rhetoric of the Islamic revolution, was an imagined narrative of Islam’s

golden age. The modern Shi'ite narrative of 'Ali's pristine (though historically doomed) caliphate placed great moral emphasis on leadership qualities of compassion (*walaya*) and self-denial (*ithar*) essential for creating a "classless" society. Added to the admixture that concocted the "guardianship of the jurist" also was the modern revolutionary urgency for assertive leadership harking back to the French age of "terror" and the Russian "dictatorship of the proletariat." Such presuppositions were barely conducive to a progressive legal framework that separates legal authority from political power and religion from the state. What profoundly was missing in this politico-legal vision of absolute leadership was a desire for re-examining the long-held precepts of Islamic law in a new light of historical relativity.

As for the clerical community, in the two decades since the Islamic revolution it has allowed itself to be largely incorporated into the Islamic regime and actively sought to monopolize positions of power. A minority of the jurists remained critical of the theory and the implementation of leadership and faced the dire consequences of their criticisms. The rising opposition to *wilayat-i faqih* on the other hand unified the pro-regime clerics behind the doctrine and solidified the clerical hierarchy to an unprecedented degree. The Shi'ite establishment more than ever appears to be an equivalent of a state-sponsored church with its ecclesiastical hierarchy, perhaps, as Said Arjomand observed, comparable to the Weberian "cesaro-papist" model of the state. The concentration of power in the hand of an oligarchy consisting of the guardian jurist and his top echelons of clerical allies, inevitably triggered much resentment. The laymen and laywomen of younger generation with revolutionary credentials now feel they have been left out by a clerical establishment that resorts to repression to preserve its privileges and monopolies.

The anti-clerical content of Aghajari's speech and his call for an Islamic Reformation originates in this pool of anti-clerical resentment. Younger Iranians are frustrated with the monopoly of power, heavy-handed treatment of dissident voices, and obscurantist legal outlook. They also are disillusioned with repeated setbacks of the seemingly pro-reform wing of the clerical establishment as represented by President Muhammad Khatami and his moderate clerical supporters. Such calls for reforming Islam are by no means rare in the history of antinomian Islam. Yet what distinguishes this post-revolutionary episode from earlier examples is that this movement of protest, especially since Khomeini's death in 1989, aimed at a consolidated clerical hierarchy with claim to infallible and comprehensive authority. The

guardianship of jurist is a far more explicit a claim over religious hegemony in public sphere and on behalf of the Imams than the old *marja'iyā* ever was. This is what makes the new criticism especially potent and enduring.

As for Aghajari's fate, he seems to have been the involuntary beneficiary of the inconsistencies that are typical of Shi'ite legal practice. The same ruling of the Hamadan court that sentenced him to death for blasphemy also sentenced him to a total of eight years of imprisonment for three other related counts and after that to ten years of ban from teaching in any university. The court does not clarify whether the death sentence should be carried before or after eighteen years of incarceration and banishment from classroom. The seemingly ludicrous verdict of the court points to the ambiguities of a legal culture built on negotiation and compromise, a culture that still seems to be thriving more than two decades of Islamic revolutionizing.

Notes

¹ *Aqajari: Matn-i kamel-i sokhanrāni-yi Hamadan, etc.* (Tehran, 1382/2003), p. 36.