

Wilayat al-Faqih: The Guardianship of the Jurist

By Ayatollah Sheikh Mu'hammad Baqir al-Irawani

[As transcribed by Sheikh Kamel Badr al-'Halafi]¹



After it has been proven that the Imam (a) has a guardianship in the first and second sense,² we arrive at the guardianship of the jurist – considering it is derived from it – and we say:

Wilayat al-Faqih in the First Sense

Many narrations may be used to prove the guardianship of the jurist in the sense of complete causality, such as the Imams (a)

saying: “The scholars are the heirs of the Prophets”,³ or “the flow of affairs and rulings is upon the hands of those learned in [the cause of] God and entrusted with His permissions and prohibitions”,⁴ or “the scholars are the trustees of the Messengers”.⁵

This is in the sense that the meaning of the scholars being the trustees of the Messengers (a) is that they are their representatives, whereby what is proven for the former is proven for the latter. And since – as mentioned – the former, who is the Imam (a), has a guardianship to act on the basis of complete causality, then so does the [Imam’s (a)] representative, i.e., the jurist.

However:

1. It is possible that what is meant by these narrations is establishing the guardianship of the jurist only in preserving rulings and conveying them.

¹ Jami' al-Fawa'id al-Gharawiyyah, p.32-40

² SADAD: The respected author had divided guardianship into two senses: complete causality, which refers to guardianship in the sense that one's decision-making mandate is complete and unconditional; and (2) partial causality, which implies leadership in the affairs regarding which people refer to their chiefs and leaders.

³ Al-Wasa'il, v.18, p.53

⁴ Tu'haf al-'Uqul, p.238; Bi'har al-Anwar, v.100, p.80

⁵ Kanz al-'Ummal, v.10, p.183

2. This claim entails the dilemma of limiting what is comprehensive, which is frowned upon. This is because there is certainty that many rulings are established for the Imam (a) alone, which entails said dilemma that – once again – is unconventional.⁶

Wilayat al-Faqih in the Second Sense

Among what may be used to prove the guardianship of the jurist in the second sense – i.e., that of partial causality – are the three following proofs:

1. The accepted narration of Ibn ‘Handhalah⁷
2. The Imam (a) saying: “The flow of affairs and rulings is upon the hands of those learned in [the cause of] God and entrusted with His permissions and prohibitions”⁸

⁶ Commentary: It can be said in response to the objection of Sheikh al-A’tham that those who maintain the view of the absolute guardianship of the jurist such as Sheikh al-Naraqī and those with him say that it is absolute like that of the Imam’s (a), so there is no issue therein. (From his eminence – [i.e., Sheikh al-Irawani] – may God preserve his blessings)

⁷ Al-Wasa’il, v.18, p.99 [SADAD: It is narrated in Wasa’il al-Shi’a, v.27, p.136-137, that ‘Umar b. ‘Handhalah said: “I asked Aba ‘Abdillah (a) about two men of our companions between whom there was a dispute surrounding a loan or inheritance for which they sought the judgment of the ruler and judges – [asking] whether that is permissible. He (a) replied: “Whosoever seeks their judgment in truth or falsity has certainly sought the verdict of the undivine authority, and whatever he rules for them is ill-gotten even if it is an established right of theirs, for it has been attained via the judgment of the undivine authority, which God has commanded should be rejected as He says: {They wish to refer rulership to the

3. The signed response of the Imam (aj): “As for the rising occurrences, refer regarding them to the narrators of our speech, for they are my proof over you and I am the proof of God”⁹

But he rejected these three proofs upon examination.¹⁰

The Concluded Result

Sheikh al-A’tham mentioned in his book Al-Makasib within the study of *wilayat al-faqih* that the guardianship of the jurist is limited to the affairs which realizing is necessary and there is certainty from their instances that the divine Lawgiver commands their fulfillment. These are the ‘*hisbiyyah* affairs

undivine authority, while they were commanded to reject it}.” I said: “Then, what shall they do?” He (a) answered: “They shall look to whomever among you has narrated our speech and looked into our permissions and prohibitions and has known our rulings; let them accept him as a judge, for I have appointed him as a ruler over you, such that if he judges by our verdict and his ruling is rejected, then it is God’s command that has been underestimated and it is we who have been rejected, and the one who rejects us rejects God, and is on the verge of polytheism”.

⁸ Tu’haf al-Uqul, p.238, and from it: Bi’har al-Anwar, v.100, p.80

⁹ Ikmal al-Deen [SADAD: Ikmal al-Deen wa Tamam al-Ni’mah, v.2, p.484]; Al-Wasa’il, v.18, p.99

¹⁰ To avoid boring the reader by prolonging the discussion, we have not mentioned the explanation [of the proof] of these narrations and what could be said about them. Those who would like to benefit and seek detail can refer to lectures 431-433.

only,¹¹ and any more than this has no basis and lacks fulfilling evidence.

Establishing the Guardianship of the Jurist

Our conclusion is that we agree with Sheikh al-A'tham that the narrations mentioned are narrations that cannot be relied upon herein, for it is possible that those who are meant by 'scholars' in these texts are the Imams (a), and it is possible that they are addressing the area of rulings and edicts. However, despite this, we can still prove the jurist's right to form an Islamic government; and he then has a guardianship in managing the affairs of the nation. This is due to two points which are similar in essence and meaning:

1. This assertion is made up of two premises:
 - A. God wants for His rulings to be implemented and does not want them to be suspended. This should be absolutely certain, for commanding good, inhibiting evil, establishing justice, standing against oppression, and the likes are required in every place and time period.
 - B. It is not possible to implement the Islamic rulings except by establishing an Islamic government through which it is possible to carry out punishments and reprimands,

establish justice, etc. And the person who is capable of applying Islamic rulings is none but the jurist who meets the criteria.

2. This assertion is also made up of two premises:
 - A. There is no doubt that every area and society is in need of a leader and government, otherwise it is impossible for the state of a nation and its people to be kept in order. This notion should be considered a clear and axiomatic matter.
 - B. If the candidacy for said leadership is between the unjust person and the upright jurist who meets the criteria, then it is unfathomable for Islam to prefer the former or remain neutral. Rather, it definitely prefers the jurist – in fact, this is necessary as required by [the rule of divine] grace and beneficence. This notion too should be considered clear as the sun, with no barriers or ambiguities.

The difference between this assertion and the one before it is that this one does not require us to take into consideration the matter of Islam consisting of rulings, given

¹¹ They are all virtuous acts that the divine Lawgiver certainly calls for, such as preserving the money of minors [in the Islamic sense].

that matter is not the basis in this assertion – contrary to the previous assertion.

However, there are six important points and issues that should be attended to, which are:

1. It should be crystal clear that even though the guardianship of the jurist is established by the two previous clarifications, there remains an essential point that requires further attention and careful consideration: the jurist must still examine the situation in terms of time, place, circumstances, and all aspects. This is such that if the jurist wishes to establish an Islamic government, he must be cognizant of whether or not there are supporters who are sincere and would not operate in a way that defames Islam and the sect if they reach positions of authority.¹² The jurist must also examine whether the domestic and foreign enemies would allow such a thing or hinder him from fulfilling his duty properly. The jurist must study such ambiguities.

Perhaps the jurist may conclude that it is not possible to form an Islamic government due to not having sincere and devout supporters, or due to there being enemies within or from abroad, or due to other secondary factors.

However, if forming the Islamic government is possible without these obstructions, then it is incumbent upon the jurist to do so and his guardianship is established. Therefore, what requires extensive focus and attentiveness are the specific instance, the application, and the ambiguities. Perhaps in most times and places it is difficult to achieve it [i.e., the establishment of the Islamic government], which is why we see that the jurist cannot take a risk and [seek to] form the Islamic government. Yes, if the jurist was sure that there were not many obstacles, and that they are on the contrary inexistent or few, then it is obligatory for him to get involved.

2. Some may ask how a jurist can form a government without being so versed in politics. The response to this question is that what is intended is not that the jurist ought to involve himself in every minor and major affair. Rather, what is meant is that he ought to be the person generally overseeing the affairs of the nation from the highest position of leadership in the state. And there is no doubt that there ought to be people whose assistance he shall seek to establish the government and execute and implement functions.

¹² This matter is crucial, for how many people does the jurist have who are close to the likes of 'Ammar, Abu Thar, Salman, and Miqdad?

3. It may then be said that this does not require a jurist, as it can be accomplished at the hands of someone else. Perhaps that is what some voices from particular corners and behind closed doors or some parties are claiming. The response to this is that if the person who is supervising and is at the top of the 'pyramid' is not a jurist, then he may commit that which is against the Shari'ah unknowingly due to not being fully acquainted with Islamic rulings – [so he must be a jurist] in order to lead the nation in accordance with Islamic rulings and standards.

4. Assume it is possible for the jurist to take authority. In such a case, it would be permissible for him to do all that sets the affairs of the nation and society in order. For instance, if setting the state in order required collecting taxes, then it would be permissible to collect them by secondary ruling. Yes, in the case of unrighteous governments, it is not mandatory to pay them – and in fact, perhaps encouraging others not to pay them is more suitable.

Meanwhile, to object and say this is contradictory is meaningless – that is, to ask how we say that before the establishment of an Islamic government it is impermissible to

pay taxes and after its formation we require doing so. This is because there is a difference between the unrighteous government and the Islamic government. The latter aims to lead the individual to their self-completion and lead the nation towards its fulfillment as the 'virtuous state'; and therefore, preserving it is mandatory and paying taxes is hence necessary.

5. Some may object here, saying that if *wilayat al-faqih* is as simple as we have stated, whereby forming the Islamic government is an axiomatic and necessary matter, then why did some jurists deny it? The answer to this is we reckon that those who denied it did so based on their hesitancy towards the particulars which we mentioned; whereas if they were cleared in those respects, and it was evident that forming the government does not entail more negatives than positives, then it is very unlikely that a jurist would abstain from establishing an Islamic government.

Sayed al-Khoei denied *wilayat al-faqih* and said what Sheikh al-A'tham said in his *Al-Makasib* – that the texts do not prove that [connotation of guardianship].¹³ However, Sayed al-Khoei exercised it in practice during the Intifadha.

¹³ SADAD: The respected author included a footnote here about the life of the highly esteemed religious authority, Sayed Abu'l-Qasim al-Khoei – may God

have mercy upon him – but we did not mention it due to its length.

He formed a committee and stepped forward himself to form the council that would govern the state. This is a form of the jurist setting out [for leadership]. This paradox is solved in light of [the explanation] which we offered.

We can say that this is the guardianship of the jurist but in an intermediate connotation. It is neither the utmost form maintained by those who believe in the absolute guardianship of the jurist, such as Sheikh A'hmud al-Naraq; nor is it in a sense whereby the outcome is that the guardianship of the jurist is absolutely unproven. It is a guardianship in its own extent.

6. Based on what has been said, a question is posed to the effect of: What do we do with the narrations that mention, “Every banner that is raised before the rise of Al-Qa’im (a) – its carrier is an illegitimate leader worshipped besides God Almighty”?¹⁴ Does this [not] mean that we ought to do nothing? The answer to this is that these narrations are about those who have [their own] banners, and they are expressions pointing to the phenomenon of inviting to oneself.

However, in the event that someone is not calling to oneself, but rather to Islam – which is what the jurist intends – then the label of carrying a banner [in said sense] does not apply to him.

This is in addition to the fact that the narration of Zakariyyah al-Naqqadh, which is mentioned in Al-Kafi after the aforementioned narration, says: “Whosoever raises a banner of misguidance – its carrier is an illegitimate leader”.¹⁵ Therefore, if we view this narration in juxtaposition with the other, we find it absolutely more particular – so, it specifies it.

A Summary of the Position

There should be no doubt about the existence of that which constitutes *wilayat al-faqih* – which is one of the two mentioned proofs, for they are sufficient and fulfilling – and the issue, if any, revolves around the existence or inexistence of a deterrent.¹⁶

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¹⁴ Al-Kafi, v.8, p.295; Bi’har al-Anwar, v.52, p.143

¹⁵ Al-Kafi, v.8, p.296; Bi’har al-Anwar, v.28, p.254

¹⁶ The lessons of Al-Makasib, Wilayat al-Faqih. See from lecture 428 on 11 Rabi’ al-Awwal 1428 to lecture 434 on 19 Rabi’ al-Awwal 1428.