

IN THE NAME OF CERTITUDE:

*The Pursuit of Juridical and Political Infallibility in Shi`ite
Islam*

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Introduction

Although Western scholarship has engaged Islamic studies more than one hundred years ago, very few researchers have focused on Shi`ite Islam. However, since the U.S. invasion of Iraq in 2003, stabilizing the country seemed impracticable without the cooperation of Shi`ite authorities. For instance, the insistence of one of the Iraqi religious leaders on holding direct elections instead of the limited caucuses proposed by the Bush administration in the spring of 2004 has complicated the administration's political and military plans, and the impact of that confrontation will have a lasting effect on the status and role of *marja`iyyah* that will be felt in Iran and other countries where Shi`ites represent a significant minority or commanding majority. This essay will describe the events that have led to the current power structure and will preview the major shifts of authority that have occurred as the boundaries between religion, politics, and jurisprudence collapse under the weight of war and the burden of achieving peace.

The Historical Context

Nearly fifteen hundred years ago, after the demise of the Prophet Muhammad, the Muslim world found itself facing a power vacuum. Tribal leaders from Mecca and Madinah debated the subject of replacing the Prophet, who served as the political leader in addition to being the Messenger of God. In the end, the debate resulted in the creation of the caliphate system, which reflected the dominant social, economic, and cultural forces of that time, but left many others out. The U.S. invasion of Iraq in March 2003 and the subsequent removal of the Ba`thist regime of Saddam Hussein have recreated the same scenario with one significant difference: The Shi`ites who were left out then are now a significant majority, and they refuse to allow history to repeat itself. The competing players (what became known as the Shi`ite and Sunni camps) are the same, although their ideology, theology, and identity are more pronounced and systematically institutionalized today than they were then.

Upon the spread of the news of death of the Prophet Muhammad in the year 632 C.E., a number of influential leaders from the people of Madinah

(*anṣār*)¹ convened at *saqīfat banī sā`idah* in a limited caucus to select his political successor. Soon, they were joined by prominent leaders from among the migrants (*muhājirīn*)² like Abu Bakr and `Umar, and in an Iowa-style caucus, Abu Bakr was selected to be the first caliph. `Ali, the Prophet Muhammad's cousin and son-in-law, who was during this time busy with the burial rituals, did not attend. Many renowned Companions had nonetheless lobbied for his right to be the Prophet Muhammad's legitimate political heir. This group of dissenting individuals included Abu Darr al-Ghiffari, al-Muqdad Ibn al-Aswad al-Kindi, and Salman al-Farisi.

Subsequently, it was reported that `Ali withheld his endorsement³ of the first caliph for more than six months. However, his participation in the political process remained conservative. It took two regimes before he was publicly elected the "Commander of the Faithful," only to be killed as he attempted to put down a devastating civil war. However, the initial withholding of his endorsement of the first caliph in itself gave support to

¹ The "supporters" are the original inhabitants of Madinah who welcomed the Prophet and the immigrants.

² This label refers primarily to the immigrants who came from Mecca.

³ In Arabic the term used is "*bay`ah*," which was a mandatory public endorsement that would legitimize the caliph or the governor. It was usually expressed in public by prominent leaders, then followed by public endorsement.

the political opposition that would emerge later as Shi`ism. By the time the caliphate had fallen into the hands of the less pious Umayyads in the year 662 C.E., the schism between religious and political authorities had widened. The Hashimites in general, and the immediate relatives of the Prophet Muhammad in particular, capitalized on the actual and perceived separation of religious and political authority to solidify their role as the moral voice and religious conscience of the *ummah*.

Before the collapse of the Umayyad regime in the year 750 C.E., one of the great grandsons of al-Husayn, Ja`far al-Sadiq, managed to unite the fragmented Shi`ite community after introducing the principle of *naṣṣ* (textual reference or identification to or of the successor) as the process by which *imāmah*⁴ is passed from one leader to the next. His reluctance to engage in political disputes also left him on good terms with the caliphs and permitted him to attract a large number of students. It is reported that his jurisprudence classes were so popular that many of the Sunni legal scholars, like Abu Hanifah, attended his courses and learned from him. I would argue that it is in this stage that Shi`ite Islam became more or less institutionalized. Prior to this time period, even the identity of the *Imām*

⁴ *Imamah* at this stage refers to the supreme religious authority, and should not be confused with religious authority that emerged during the occultation.

was never known with any degree of certainty. During the time period between the *imāmah* of al-Husayn Ibn `Ali and that of Ja`far al-Sadiq, there were always competing claims of leadership that involved not only the descendents of al-Hussayn, but also those from the birth-line of his older brother al-Hassan.

The Foundation of Shi`ite Legal Philosophy

It is highly possible that Shi`ite ideas and beliefs were not systematized until after the sixth *Imām* (the second Islamic century). At that point, it would seem that theological and legal reasoning were produced and projected backward in order to enhance authority and describe political and legal dissent in religious terms. The net effect was that political dissent was elevated to the status of a religious dogma that developed distinct from the prevalent political and religious discourse.

Subsequently, at least two important claims gave shape and independence to Shi`ism: the concept of divine grace (*lutf*) and the role of intellect in legal reasoning (*`aql*). While the former privileged the descendents of `Ali, the latter sanctified religious and legal knowledge in the eyes of the adherents.

Whereas Sunni jurists argued that political succession to the Prophet is a mundane matter that ought to be determined by the will of the people through the process of *shūrā*; early Shi`ite scholars argued that the human need for absolute truths and unmitigated guidance coupled with the grace of God guaranteed that an infallible human being would be present among every generation. This condition was satisfied in their view by the designation of prophets and *Imāms*. In other words, prophets were sent to deliver absolute instruction to the people, and these prophets would then designate *Imāms* to succeed them. In the case of Islam, Muhammad was the Prophet, and some select members from among his progeny, through his daughter Fatimah, who was married to his cousin `Ali, were his successors. Although this doctrine is shared among all the Shi`ite denominations, its exact lineage is not as clear. Over time, the Shi`ite community divided into at least three major sects: the Zaydi Shi`ites, who branched off after the demise of the fourth Husayni *Imām* (`Ali Zayn al-`Abidin); the Isma`ilis, who deviated after the demise of the sixth *Imām* (Ja`far al-Sadiq); and the Twelvers, who maintained al-Hussayn lineage for twelve successive generations, ending with Muhammad Ibn al-

Hassan,⁵ also known as al-Mahdi, who is believed to have been in occultation (*ghaybah*) since the year 941 C.E.⁶

This hesitancy and inconsistency surrounding the determination of the heir of each *Imām*, as evidenced by the division of the early Shi'ite community into sects, show the *ed-hocish* nature of the process that characterized the development and the standardization of religious, political, and legal Shi'ism for the first three Islamic centuries. At one point, it was believed that succession was automatically passed from the father to the oldest son. The deviations that took place after the fourth and sixth *Imāms*, however, raised concerns about the practicality of that approach; hence, the adoption of the “textual” (*naṣṣ*) designation of the *Imām*.⁷

Because of the above fundamental difference in belief regarding the status and function of the Prophet's successors, Sunni and Shi'ite scholars also fundamentally differed on the matter of extracting and deriving legal opinions. Whereas Sunni jurists adopted at a very early stage the principle

⁵ This branch of Shi'ism is also known as *Imamiyyah* or *Ja'fariyyah*.

⁶ The concept of occultation refers to the claim by Shi'ite scholars that the Imam practically went into hiding or seclusion awaiting the right time to return.

⁷ Farhad Daftary, *The Ismailis* (New York: Cambridge university Press, 1990), 23-90.

of *ijtihād* (informed independent reasoning) in order to formulate new legal rulings regarding new cases, Shi`ites initially rejected that principle altogether in favor of imitation (*taqlīd*) of the opinion of infallible *Imāms*. However, and for the Twelvers, that rejection would come to an end during the major occultation⁸ for obvious reasons, and they gradually adopted *ijtihād*, albeit under a different terminology, namely “intellect” or “reason” (*`aql*). At this stage, the reliance on reason by the Shi`ite scholars was limited to secondary cases under the pretext of filling the void (*sadd al-farāgh*) left by the absence of infallible religious leadership. In Shi`ism, it is believed that the primary rules that were preserved in the tradition (*ahādīth*) remain in effect perpetually.

Implications of the Doctrine of Occultation

Occultation not only caused reliance on intellect (*`aql*) as a juridical methodology that was necessary in order to ascertain the continuity, adaptability, and relevance of Shi`ite jurisprudence, but it also signaled—if not caused—the emergence of the *hawzah* as the center for the training and development of religious and legal scholars. Despite the logical and historical connection of this development to the time of occultation, the

⁸ The Imam went into hiding or seclusion temporarily; hence, the minor occultation; then he went into hiding or seclusion since then; hence, the major occultation.

precursor for this institution could nevertheless be traced back to the time of the sixth *Imām* (Ja`far al-Sadiq), given his role as an educator and a reformer of Shi`ite thought in general, as I have mentioned above. The first *hawzah* had appeared in Kufah around the middle of the second Islamic century and lasted until the first quarter of the fourth Islamic century, after which this institution was overshadowed by the Qom/Ray *hawzah* that lasted until the first half of the seventh Islamic century. Many authorities taught at and published from this institution, including the renowned al-Sayyid al-Murtaza and Shaykh al-Ta`ifah al-Tusi. With time, the changes in the political climate produced a shift of authority to the *hawzah* of Baghdad, which lasted until the Mongol occupation during the year 656 A. H. (1258 C.E.). Finally, the *hawzah* of Baghdad was in turn supplanted by the *hawzah* of al-Hillah, which lasted until the year 965 A. H. (1557 C.E.). Most recently, Najaf and Qom have alternated roles as centers of influence and learning, depending on the political climate. It seems to be swinging toward Najaf now, as Qom seems unable to produce and retain powerful *marāja`*.

Although the Shi`ites' claim of `Ali's preferred leadership was based on his affinity and qualifications, during the occultation period, new conditions for religious, political, and legal authority (*marja`iyyah*) were

added as well.⁹ The political and intellectual movements described at least three major qualifications of *marja`*: (a) *afdaliyyah* (excellence), (b) *akbariyyah* (seniority), and most recently (c) *a`lamiyyah* (knowledge).

(a) In the eyes of some Companions and in the belief of the adherents to Shi`ism, `Ali was not only supported by Qur`ānic and Sunnaic proofs, but also by the fact that he was simply the “best” candidate for succeeding the Prophet. During an early stage of the development of Shi`ite thought, the principle of rejecting of the governance of the *mufzūl* (the better) in the presence of the *afzal* (the best) was solidly built into Shi`ite political and religious thought. It was nonetheless challenged (or marginalized) by *Imām Zayd Ibn `Ali*, but that challenge resulted in the first major division among Shi`ite community, which marked the origination of Zaydi Shi`ism.

(b) Two generations later, another major test contested the consistency of Shi`ite ideology was checked when the practice of passing on the *imāmah* to the older son was questioned. Again, the circumstances and

⁹ Once the last Imam went into occultation, the *imāmah* was replaced with *marja`iyyah* in Shi`ism in order to distinguish between the two doctrines, which are fundamentally different.

outcome of that situation further divided non-Zaydi Shi`ites into Isma`ilis and *Imāmis*.

(c) Most recently, and in the absence of a living infallible *Imām* (*ma`sūm*) among the *Imāmi* Shi`ites, the presence of numerous *marāji`* and the need to have a single authoritative voice have forced the collective leadership to argue for the leadership of the most knowledgeable *marja`*; hence, the doctrine of *a`lamiyyah*.

The Structure, Function, and Status of the *Ḥawzah*

Nowadays, a student attending *ḥawzah* seminaries may earn a scholarly degree certifying him as a *mujtahid*. The process may take up to twenty years, during which a student must complete three levels of study: Introductory Studies, Foundational Studies, and Independent Research.

a. Introductory Studies: During this stage, a student will be limited to the study of introductory materials in the area of grammar, syntax, rhetoric, logic, literature, and legal studies. Sample textbooks used at this level include books like Ibn Hisham's *Mughni al-labīb*, Taftāzānī's *al-Mutawwal*, Qutb al-Din al-Razi's *Tahrīr al-qawā'id al-manṭiqiyyah fī sharḥ al-risālah al-shamsiyyah*, Hilli's *al-Mukhtasar al-nāfi` fī fiqh al-imāmiyyah*, and Baqir al-Sadr's *Durūs fī `ilm al-usūl*.

b. Foundational Studies: Once a student finishes the previous stage, he focuses on a thorough analysis and synthesis of textbooks in the discipline of jurisprudence, philosophy, and theology. The format for courses at this level is similar to that of a seminar, where books are closely read and then critiqued by the instructor and the students during class. The typical list of textbooks for these courses would include works such as al-`Amili's *al-Rawdah al-bahiyyah fī sharḥ al-lum`ah al-dimashqiyyah*, al-Ansarī's *al-Makāsib*, al-Akhund's *Kifāyat al-uṣūl*, al-Tusi's *Tajrīd al-i`tiqād*, and Baqir al-Sadr's *Falsafatunā*.

c. Independent Research: During this final stage, students are expected to conduct independent research outside the classroom, moving beyond the bibliographical materials provided by the instructors. Students attend lectures and discuss a broad range of topics, and do not restrict themselves to a specific school of thought. Classes at this level have fewer students and are taught cooperatively by more than one scholar.

The institution of *hawzah* has produced prominent Shi`ite scholars like al-Shaykh al-Mufid (336-413 A.H./947-1022 C.E.), al-Sayyid al-Murtaza (355-446 A.H./965-1054 C.E.), al-Shaykh al-Tusi (d. 460 A.H./1068 C.E.), Nasr al-Din al-Tusi (d. 672 A.H./1274 C.E.), al-Shahid al-Awwal [al-

Amili] (d. 786 A.H./1384 C.E.), al-Fayd al-Kashani (d. 1091 A.H./1680 C.E.), al-Hurr al-Amili (d. 1104 A.H./1693 C.E.), al-Bahrani (d. 1186 A.H./1772 C.E.), al-Tabursi (d. 1320 A.H./1902 C.E.), Ayatallah al-Uzma al-Sayyid Kazim al-Yazdi (d. 1337 A.H./1919 C.E.), Ayatallah al-Uzma al-Sayyid al-Khumayni (d. 1409 A.H./1989 C.E.), Ayatallah al-Uzma al-Sayyid al-Khu'i (d. 1413 A.H./1992 C.E.), Ayatallah al-Uzma al-Sayyid Muhammad Baqir al-Sadr (d. 1399 A.H./1979 C.E.), and Ayatallah al-Uzma al-Sayyid al-Khu'i (d. 1413 A.H./1992 C.E.).

As in the pre-occultation period, when there was no real consensus about who was the ultimate authority at any given time, so too, during the occultation era, the problem of identifying a single absolute *marja`* never materialized, despite the invention of the principle of *a`lamīyyah*.¹⁰ Although the adherents may choose which *marja`* they choose to follow (*taqlīd*),¹¹ there are a number of factors involved that can sway the people one way or another. Firstly, although religious and political authority are not generally inherited in occultation Shi`ism; the financial wealth that is

¹⁰ Although this doctrine is based on a tradition reported from Ja`far al-Sadiq (*al-`arif bi ahli zamanihi haythu la tahjam `alayh al-lawabis*), it is clear that it has more relevance to the authorities of the occultation era than those who lived during the pre-occultation.

¹¹ The process of how the adherent would select the *marja`* is described as conscious certitude (*huṣūl al-tuma`nīnah*).

inherited could indeed favor a son of the deceased *marja`*.¹² The extraordinary influence wielded by Muqtada al-Sadr and Abdel al-Majid al-Khu`i¹³ despite the fact that they are not certified *mujtahids*, can be explained by their lineage as the children of two accomplished and recognized *marāji`*.

Secondly, the political climate in which the *marja`* lives could be considered a major factor in increasing or diminishing the influence of any given authority. For example, and during the Ba`thist rule of Iraq, Ayatollah al-Sayyid Muhammad Husayn Fadlallah's opinions were readily accepted by more Shi`ites than those of the more senior al-Sistani, because the former is perceived as enjoying more political freedom in Lebanon, which would enable him to make uncensored decrees. Someone living under coercive regimes, on the other hand, may not be at liberty to issue proper decrees.¹⁴

¹² Shi`ite Muslims pay one-fifth of the annual wealth as tax (*al-khums*) to the *marja`*. The *khums* is different from the alms known as *zakah*, which is a smaller percentage paid by all Muslims regardless of the school of thought to which they adhere.

¹³ The younger al-Khu`i was assassinated upon his return from exile from London in May of 2003.

¹⁴ This fact is even more extraordinary given that Shi`ite scholars are known to practice the doctrine of *taqiyyah*, which in essence allows one to express untrue opinions in order to save one's life or in the interest of the larger community.

Thirdly, the followers seem to more readily favor a *marja`* whose descent can be traced back to the original *Imāms* than one who is not from the family of the Prophet, even if he is of superior knowledge. Today, the lineage is easily discernable by looking at the color of the turban the *marja`* wears: If it is black, he is a *Sayyid*, which implies that he is a descendent of the family of the Prophet;¹⁵ whereas white turbans are worn by non-Hashimites or non-relatives of Prophet Muhammad.

The Dilemma of Pluralism

Another byproduct of the doctrine of occultation in Shi`ite thought is the presence of many religious authorities (*marāji`*) in an age of absence of absolute guidance. Before the occultation era, and especially after the dominance of *Imām* Ja`far's doctrine of textual support of any given *Imām's* claim, the disputes regarding the identity of the true infallible *Imām* was theoretically resolved. Today, on the other hand, there are many equally knowledgeable and equally capable religious authorities who lack the textual "certification," if you will, that would raise them above all the others. The doctrine of *a`lamiyyah* is just one instrument that helped reduce the effects of dissent that accompanied the selection of the absolute

¹⁵ Or sometimes, more broadly defined, a member of the Hashimites clan.

marja`. For instance, many powerful figures wield considerable influence: Ayatollah al-Sayyid `Ali Khaminey, who holds the position of *al-waliyy al-faqih* (the Regent Jurist) and the religious authority (*al-marja`*) at the same time; Ayatollah al-Sayyid `Ali al-Sistani who sits on top of the hierarchy of the *hawzah* at Najaf in Iraq and who enjoys wide following, al-Sayyid Muhammad Husayn Fadlallah from Lebanon, who is a prominent *marja`* for most Arabic-speaking Shi`ites world wide, and a plethora of other *marāji`* in many countries around the world.

The first three major authorities mentioned above are nonetheless representative of at least three different understandings of the definition and function of the *marja`iyyah*. For example, while Fadlallah sees the *marja`* as the scholar who exhibits “juridical, social, political, and activist maturity (*rushd*); in addition to being of upright character and of strong spirituality”; we find that al-Sistani excludes “political and activist maturity” as a prerequisite for reaching the status of a *marja`*. However, the reluctance of every major Shi`ite authority to discourage the followers to adhere exclusively to his teachings or to endorse one particular *marja`* over another has allowed the followers (*muqallidīn*) to freely select whomever they wanted. As a result, the opinions and degrees of involvement of any given *marja`* became directly influenced by the

public perception and the pressure of the masses. This would explain al-Sistani's change of heart when he became directly involved in political decision-making, despite his earlier stated opposition to the "political and activist maturity" of the *marja`*. Clearly, the increased popularity of the younger and less experienced Muqtada al-Sadr due to his direct involvement in political matters must have pressured al-Sistani into intervening in politics and activism or risk being made irrelevant by the changing circumstances in the country.

The multiplicity of *marāji`* became a chronic symptom, especially after the demise of Ayatollah Khomeini of Iran and Ayatollah al-Khu`i of Iraq. The division of the Shi`ite community was further complicated by the very distinct views that each of these authorities held. Whereas al-Khu`i insisted on *a`lamiyyah* as a condition for *marja`iyyah*, Khomeini emphasized political and "activistic" maturity as the author of the controversial theory of *wilāyat al-faqīh* (the Regency of the Jurisprudent). After the death of these leaders, the people became divided over these issues, and they began "shopping" for a *marja`* who represented their preferences. The multiplicity of *marāji`*, on one hand, and the obligation of freely selecting a *marja`*, on the other, had created a competitive market of ideas that enriched and expanded Shi`ite political thought in

unprecedented ways. For the first time in the history of Shi`ism, religious authorities find themselves in a position where they have to make political decisions not from the position of an inconsequential opposition or insignificant minority, but rather as an active governing agency that no longer enjoys the divine privileges reserved for the early *Imāms*.¹⁶

Certainty and Diversity

The proliferation of *marāji`* is a direct result of a robust new diversity and tolerance for dissent. However, it can be argued also that dissent occurs to signal salient doubt, conspicuous uncertainty, and noticeable ambiguity that subject most values to the laws of relativity. So how does Shi`ite scholarship maintain its high degree of certainty in an environment where absolute knowledge and clarity of purpose are being diluted by the social, political, and economic circumstances? How does modern-day Shi`ism balance the absolutism that is required by the religious discourse in the face of the pressures of a world community characterized by enfeebled boundaries, mutated identities, and unstable loyalties?

¹⁶ This shift is clearly expressed by the struggle of Sistani to remain reclusive while relying on his deputies to express his political views. Whether this approach can position him beyond criticism remains to be seen, but what is certain is that he must now deal with political issues at least until an acceptable and stable government is established.

Despite the availability of choices, adherents to Shi`ism must still subject themselves to imitation (*taqlīd*). Imitation is broadly defined as the “seeking of erudite opinion by someone who is ignorant of legal rulings, and such an act could excuse his or her conduct before God.” In other words, unless one declares oneself to be a *mujtahid*, one has no choice but to seek the counsel of a *living* authority (*marja` ḥayy*). The advice provided by the *marja`* shall then release the imitator (*muqallid*) from any responsibility for acts based on the content of the given advice. Furthermore, in the case where the chosen *marja`* dies, the imitator may choose to live by the code of the deceased provided that he or she first seeks the counsel of a living *marja`* who permits that. For instance, since Muhammad Husayn Fadlallah holds the opinion that an imitator may change *marja`* (*`udūl*), selectively adopt the advice on various matters of more than one *marja`* at the same time (*tab`īd*), and continue to follow the teachings of the deceased *marja`*, his imitators (*muqallidūn*) may then adopt any of the above permissions provided that they continue to take him as their living *marja`*.

On the other hand, those who adhered to the teachings of al-Sayyid al-Khu`i for example, may not practice the doctrine of selectivity in seeking counsel (*tab`īd*) nor change *marja`* at will, because al-Khu`i did not permit

it since he believed the principle of *a`lamiyyah* was necessary for a *mujtahid* to become a *marja`*.

Similarly, al-Sayyid Kazim al-Husayni al-Haeri adheres to the principle of *a`lamiyyah*, but goes beyond that to argue that the deceased *marja`* could not be the most knowledgeable one because knowledge is accumulative and the living *marja`* would be expected to know more than someone who is deceased. For that reason he does not hold as valid the imitation of the deceased scholar unless it is permitted by the living *marja`*.¹⁷ Subsequently, he disagrees with Fadlallah regarding the validity of the doctrine of selectivity in seeking advice (*tab`id*).

Jurisprudence, Practice, Politics, and Certainty

It would seem that Shi`ite scholarship is moving closer and closer to the set of issues that faced Sunni jurists during the period of systematization of Islamic law. During the occultation, scholars who lay no claim to infallibility are sought for guidance in matters of faith, practices, and transactions. All Shi`ite authorities agree that every Muslim, upon reaching the legal age (*taklif*), must live in accordance with the legal

¹⁷ Al-Haeri explicitly states that he does not readily permit the imitation of the deceased *marja`*: “*lā nujawwiz taqlīd al-mayyit ibtidā’an.*”

rulings of the *sharī`ah*. Unless one is a *mujtahid*, one shall seek the counsel of a *marja`* and follow his determination (*taqlīd*) in all matters of life, so that one's life is in harmony with the divine imperatives.¹⁸ In such a scheme, the imitators (*muqallidūn*) are either completely ignorant of the dictates of the *sharī`ah* or knowledgeable but incapable of extracting (*istinbāt*) the rulings from the legal proofs. Such a person then must seek that absolute determination through one of four means: (a) explicit knowledge (*yaqīn tafṣīlī*), (b) reasoned knowledge (*ijtihād*), (c) imitation (*taqlīd*), or (d) presumptive knowledge (*iḥtiyāt*). However, since the matters discovered through explicit knowledge are generally restricted to the necessary acts that were addressed in the primary sources, it remains the case that the individual exerts reasonable efforts in regard to matters that are dealt with via reasoned and presumptive knowledge or imitation. Valid imitation occurs when the seeker secures the legal determination from a *marja`* in person, or as reported by two persons of high probity, or

¹⁸ Admittedly, the concept of *marja`* is a complex one: for any one who goes through the system of learning and becomes a *mujtahid* can offer advice, but without him publishing his *risālah* (a *marja`* declaring his *marja`iyyah*); his decrees must be in conformity with a declared *marja`*; not based on his own views.

through the consultation of the published legal opinions of the *marja` (al-risālah al-`amaliyyah)*.¹⁹

The world, as seen through the eyes of the Shi`ites, is layered; the individual first must discover himself and judge his abilities and his standing in the pyramid of knowledge. Once the self-discovery takes place, he or she must continue on the journey towards absolute certainty. Admittedly, the next step is even more difficult, especially once one admits that one is in need of expert counsel. In other words, the person needing advice has already determined that he or she lacks the expertise to know the law in regards to a particular case. How could such a person now ascertain which of the scholars, who are all trained experts, is indeed the most knowledgeable one (*a`lam*)?

Al-Sistani, for example, defines the most knowledgeable (*a`lam*) as the “one most capable of extracting legal rulings; that is, one who is most familiar with the legal rules and the applications of these rules to the point that his determination removes all doubt even when juxtaposed with the opinion of his peers.” Nonetheless, it is up to his peers—as the body of experts (*ahl al-khibrah*)—again to vet his status as the most

¹⁹ Although this understanding is widely held by all Shi`ite scholarship, it is most recently articulated in the speeches of al-Sistani regarding matters of *ijtihād* and *taqlīd*.

knowledgeable one. If this process sounds dubious and circular to outsiders, it comes as no surprise then to learn that not all contemporary Shi`ite scholars agree on the practicality and soundness of the doctrine of *a`lamiyyah*. Fadlallah, for instance, readily admits that it is impossible to determine the absolute *a`lamiyyah* of the *marja`*; thus, he distinguishes between what I would call *internal grand-expertise* and absolute or *general grand-expertise*. While the former is possible to determine since it is limited to a known number of experts, the latter remains impossible to determine given that no body of experts could claim that they are familiar with *all* the works and opinions of *all* the *marāji`* of the time.

This increased dissent was sparked by the theory of the Regency of the Jurisprudent (*wilāyat al-faqīh*) authored by Ruhollah al-Musawi al-Khomeini, the founder of the Islamic Republic in Iran. As a result of that theory, Shi`ite religious leaders were forced to choose between expanding their authority to cover political and social issues, or shunning politics in order to maintain that mystical and revered status they had enjoyed throughout the Islamic history.

The existence of a Shi`ite state did not encourage a rapid migration to Iranian religious centers or an open adoption of Khomeini's political

ideology. Rather, many Shi'ite scholars remained living under self-imposed political censorship both inside and outside Iran. Others who embraced the political role of the *marja`*, like Fadlallah, soon realized that the inescapable criticism that usually comes with holding political roles must be softened by moving away from the person-based expertise (*marja`iyyat al-shakhs*) and towards an institutional-based expertise (*marja`iyyat al-mu'assasah*). With the most recent political crisis that accompanied the preparations for the 2004 parliamentary elections in Iran, it seems that this proposal might find some appeal in the near future.

The political and economic climate created by the U.S. invasion of Iraq in March of 2003 has also weakened the stance of those religious leaders who wanted to stay away from political affairs. The unexpected intervention by al-Sistani in the process of transferring sovereignty back to the Iraqis and his insistence on direct elections shows the extraordinary pressure on the *marāji`* to be part of the political process or risk being marginalized.

After nearly a quarter of a century, religious experts (*marāji`*) in Qom and other religious centers of influence have begun to openly criticize the religious validity and theoretical soundness of the theory of the Regency

of the Jurisprudent (*wilāyat al-faqīh*) that is at the heart of the political system in Iran. A number of religious experts, for instance, have charged that *marja`iyyah*—once expanded to cover political matters—must be transformed into communal bodies similar to political parties so that (a) the interests of the state are not placed at the mercy of one person whose achievements may end with his death, hence forcing the nation to re-invent the wheel every time a leader dies, (b) the mistakes committed by the individual leader would not accumulate to a level that would hinder the progress and development of the nation, and (c) political authority is not confused with religious authority to the point where *marja`iyyah* becomes a political dictatorship in the guise of religious sacredness. Those who level these charges argue for the creation of a *marja`iyyah* that is based on a partisan structure that would institutionalize the function and jurisdiction of the *marja`*.

Those who disagree with the above assessment contend that because political parties are characterized by a pyramid-like structure and depend on elections and platforms, it is not practical to subject the doctrine of the Regency of the Jurisprudent (*wilāyat al-faqīh*) to these mundane terms. For them, the doctrine of the Regency of the Jurisprudent is mandated by the infallible *Imām*, and therefore it cannot be subjected to popular polls

and party platform directives. The *marja`*, they argue, has a clear mandate, and that is to determine the conformity of the secondary rules to the immutable primary rules found in the Qur`ān and the Sunnah. His function is to establish the justice and the rule of the divine law, and his performance therefore cannot be judged except by a group of his peers, not through a direct election that involves those who may not be qualified to determine the legal rules.

Granted that continuity and consultation are necessary in order to facilitate the smooth transition from one *marja`* to another, and in order to minimize error; it has been suggested that the current doctrine of governance is slightly amended to move towards a more “objective expertise” (*marja`iyyah mawḍū`iyyah*) wherein the governing jurisprudent expands his advisory council and improvises the role played by his deputies and field agencies in order to provide him with timely information, ideas, and proposals so that he can make an informed decision. In other words, instead of the partisan structure for the position of the *marja`*, the proponents of the above view argue for the creation of an agency (*jihāz*) that is made up of religious as well as professional and occupational experts. The difference between this proposal and that of the critical camp is that the latter envisions the final decision as remaining in

the hands of a single person, the grand-jurisprudent, instead of in the hands of all members of the party, especially because that the party may include non-jurists among its membership.

What can be concluded from the above debate is that now more than ever before, Shi'ite scholarship is moving towards adopting juridical principles like limited *shūrā*, posited legal principles, and logical certainty as opposed to relying exclusively on divine absolutism. In other words, prior to occultation, any form of government that would have placed the infallible *Imām* at the top of the power structure of governance would be nothing short of a theocracy. During the occultation, however, a movement emerged that favored the adoption of public referendums. The proposed referendum is nonetheless limited to the election of a *marja`* from among a pool of other *marāji`* only. That is to say, the election process offers the *marja`* the mandate of the General Regency (*al-wilāyah al-`āmmah*) and not the expertise (*marja`iyyah khāṣṣah*) per se, because the recognition of expertise of the *mujtahid* is restricted to the judgment of his peers (*ahl al-khibrah*). Not subjected to referendum also is the fact that

supreme governance of the community can only be filled by a jurispudent per textual legal proof as reported in the tradition of the infallible *Imāms*.²⁰

It was argued that *wilāyat al-faqīh* is an institution that is invented as a place-holder that can be filled by anyone until the re-appearance of the infallible *Imām*, who is the only person who may lay a claim to the *al-wilāyah al-`āmmah*. This criticism was refuted by the adherents to the doctrine of *wilāyat al-faqīh*, like Kazim al-Haeri, who stressed that Islamic law is based on two categories of sanctions: permanent sanctions (*thābit*) that cannot be changed, and sanctions that change (*mutaghayyir*) depending on the needs and circumstances of the community. However, the determination of the laws in the second category is contingent on and limited by the sanctions of the first category. For this reason, although the holder of such a position is indeed a place-holder who fills a vacuum created by the occultation of the infallible *Imām* (*mal' al-farāgh*), he

²⁰ The legal proof used by Khomeini to articulate the theory of *wilāyat al-faqīh* is the tradition of `Umar Ibn Handalah. It is reported that Ja`far al-Sadiq helped his followers decide whose expert opinion to follow by saying: “One must consider; if there is among you someone who is learned in our tradition, aware of what we have made lawful and unlawful; then he must follow his advice for I have made him in charge of governance over you (*hākim*). If person is offered a ruling from such an expert and he rejects it, then it is as if he is rejecting us, and rejecting us is like rejecting God’s decrees which amounts to idolatry (*shirk*).”

nonetheless must be someone who is an expert on permanent sanctions and who is able to extract legal opinions for the second category that would not contradict the letter and spirit of the permanent sanctions. On this basis, the proponent of this view concluded that such a person ought to be a jurist (faqīh).

Another challenge to the doctrine of *wilāyat al-faqīh* centers on the role of the majority opinion in deciding on the form of governance and on who ought to govern. The proponents of *wilāyat al-faqīh* seem to be aware of the clash between democratic principles and the perceived dictatorship of the *marja`*, a nonelected powerbroker who sits on top of the pyramid of governance. For them, the criticism of democratic values can be summarized by what they perceive as shortfalls of the social contract where personal freedoms are only limited by the freedoms of others. Such a system is charged with being tyrannical when it comes to the interests and rights of those who do not agree with the majority.

It is argued that in a democracy, forty-nine percent must succumb to the dictates of the fifty-one percent of the population. However, since such a simple majority's choice may not necessarily represent the absolute truth regarding any matter, it follows then that in a democratic system,

minorities and those who did not or could not participate in the election are being ruled without their consent. In addition, given that the democratic process favors the rich and that there is a significant percentage of disfranchised voters, democracy becomes hardly the rule of the people by the people. It is indeed the rule of the elite and the privileged. In contrast, critics of the democratic process contend that a system based on the *marja`iyyah* is one where the ruler is not governed by the terms of a social contract but rather by a sense of responsibility and servitude to God. Such a ruler is merely an agent for God, who is the true holder of power. In a system built on *marja`iyaah*, neither the minority nor the majority exerts governance power, since “governance is the divine jurisdiction per Qur’ānic enunciation [*ini al-hukmu illā lillāh*].” It follows then that the election of *al-waliyy al-faqīh* is the extension of the will of God on earth.²¹

Conclusions

At a very early stage in the development of Islamic thought, the relationships between and domain of religion and politics, the Qur’ān and the practice, and the ruler and the ruled were tested by the civil wars that

²¹ This argument was articulated by al-Haeri in his lecture series titled *al-imāmah wa-qiyādat al-mujtama`*.

resulted in the murder of the third and fourth caliphs, `Uthmān Ibn `Affān and `Ali Ibn Abi Talib. Literal interpretation of the Qur`ān and its accessibility caused the emergence of two wildly irreconcilable trends, despite the reliance of both on the same sources.

First, there was the idea that the community at large (trusting that there would be “democratic” access to the primary sources of law, namely the Qur`ān and the Sunnah) would suffice to guide the masses to selecting temporal rulers. After all, it was argued, that is how the Righteously Guided Caliphs were “elected.” Subsequently, the civil war became a proof that uncontrolled access to a divine book could empower fanatics to go beyond the letter and intent of the teachings of the Qur`ān. From that point onward, Muslim jurists embarked on a path of systematizing Islamic theology and jurisprudence in hope of discovering, through sound reasoning, a “perfect system.” Within a period of just over three centuries, that mission was declared accomplished, leading to the closure of the doors of *ijtihād*. What was then seen as a conclusion of the search for the “perfect system” became the time signature for the beginning of a rapid decline of the Islamic civilization and a slide into uncertainty.

Second, there were those who did not trust human reasoning and the outcome of limited caucuses, and who campaigned instead for divine guidance through a predetermined lineage: A theological claim that the status Prophet was supposed to be inherited by his son-in-law, who in turn would be succeeded by his sons and grandsons, assuring the community of the believers direct access to a living infallible leader who would guide them to worldly and heavenly deliverance by way of authoritative interpretation of the Qur'ān and the Sunnah. That path also reached an unforeseen dead-end, with indefinite interruption of the line of Muhammad's progeny forcing the keepers of the tradition to proclaim the occultation theory.

These two major trends seem to be on an opposite trajectory, with the end of the first becoming the marker for the beginning of the second. However, as each of these two schools of thought is reacting to two different sets of circumstances, there is little intellectual and traditional collaboration and exchange between them. One of the few common features is that each of these two camps is on a mission to prove that the "perfect system" has existed. Another common element is the fact that the system thus far appears to be based on jurisprudence and legal philosophy, not on theology and social interest. Scholars of the two schools of thought

are equally obsessed with proving the validity of their own claim, which they make beyond the shadow of the doubt. In the final analysis, the search for absolute justice becomes an extremely difficult journey towards the universe of intellectual and practical certitude.

Remarkably, unlike the rest of the Muslim community, the adherents to Shi`ism are extremely hierarchized in their way of life. Whether it was the product of the cultural and political environment, the manipulation of the political regimes, or the maturation of an inherent political thought that was rooted in the religious discourse, the role of Shi`ite scholarship is undoubtedly changing as it moves from being a private discourse into the public domain. Moreover, for the first time in the history of Islamic civilization, Ja`fari theology and jurisprudence finds itself in a position of power and influence. As direct actors in the political sphere, they are now facing a challenge that they did not face before, and that is the need to be held to reasonable standards of accountability and responsibility.

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About the Author: AHMED E. SOUAIAIA (*sway-IYA*) is a professor of Arabic, Islamic, and international studies. He teaches a variety of courses in Religious Studies, College of Law, and International Studies. He earned his Ph.D. from the University of Washington (Seattle) where he had also taught for four years. He is the author of a number of books, journal articles, and essays. For more information, visit the author's website at: www.souaiaia.com.