AYATOLLAH KHOMEINI: THE CONCEPT OF VELAYAT-E QA'ITH

The concept of velayat-e faqih (guardianship of jurisconsult)\(^1\) as interpreted by Khomeini constitutes an important aspect of contemporary Shi'i religio-political thought. It served as a major ideological justification for the legitimacy of the clergy to overthrow the Pahlavi regime and capture power and thus establish a theocratic state. In his theory of velayat-e faqih Khomeini discusses the sources of the fugahā's legitimacy, their rights and duties and their status and role in the society.

For Khomeini, just as the implementation of the Divine laws (shi'i) is all important, the question as to who will implement these laws is also very important. Therefore, after having described the necessity of the rule of shari'a and the form of the government, he turns to elaborate as to who will be the leader of the community in his theory of velayat-e faqih. The thesis

\(^{1}\) The term velayat (Arabic wilāya) has a number of connotations such as gurdianship, rulership, successorship, deputisship of the Prophet and Imam - both in its esoteric as well as exoteric dimensions. For an elaborate description of the term velayat in all its meanings and connotations and different kinds of usages see Ayatollah Mortoza Motahheri, Velayat va Velayatha, (Tehran, n.d.)
of Khomeini's interpretation in this regard is as follows: The fuqahā of Islam are the rightful heirs of the Hidden Imam; they are designated as the deputies and successors of the prophets and imams; they are the proofs (hujjā) of Islam, therefore they are responsible for those acts and duties for which the Prophet and imams were sent. As the Prophet and imams were appointed by God to interpret God's will and to execute it on earth, the fuqahā are also entrusted with the same two-fold tasks. The fuqahā inherit everything from the imams except, of course, the supernatural qualities. The fuqahā are custodians as well as rulers of the people, on behalf of the Hidden Imam. Evidences to prove this can be found in both Qur'an and Tradition. The government of a fāqih-e 'ādil ("just fāqih") is the only legitimate government on earth and the 'ulama' should strive to establish such a government by overthrowing all other tyrant and unjust governments.

Khomeini's theory of velayat-e fāqih is based on the following presumptions:

1. The injunctions of the shari'ā, including those pertaining to government and politics (hukumat va siyāsat) are not suspended during the period of ghaybat.

2. Existence of a government is necessary in order to implement those ordinances of shari'ā.2

2 See chapter 5.
3. Negligence and avoidance is not permissible (ja'ez) regarding the implementation of those laws.³

4. It remains untold as to who are the people who will implement those laws in the age of Occultation.⁴

5. Traditions and reason indicate that they are the imams, and during their absence fugahā are wulat al-amr (holders of authority).

As usual, Khomeini, puts forward both rational arguments and quotations from the Qur'ān and Tradition to support his theory that the government of a just faqih (faqih-e 'adil) is the sole legitimate government in the absence of the Imam. As regard the rational argument he says that there are two essential characteristics of the Islamic government; it is a government of law and justice. Because the qualifications of its leader should correspond to its nature, therefore, he must possess knowledge of law and justice. Now only a faqih-e 'adil can possess these two qualifications. Thus only he can be the head of state of an Islamic government.⁵ According to him, an ordinary person who has

³ Khomeini, Hukumat-e Islami, p. 62.
⁴ Ibid.
⁵ Cf. Ibid., pp. 58-59.
little knowledge of shari'a cannot be head of the state, because he will be in a constant need of shari'a experts to run the government. Therefore, 'it is better if the reign of power be formally in the hands of fugaha', not in the hands of those who need to follow fugaha' due to their ignorance of laws'. According to Khomeini fugaha' are the heirs of velayat of the Imam. Therefore if a faqih-adil establishes a government it will be obligatory upon every believer to obey him in the same way as obedience of the Prophet and the imams is obligatory.

As regard the status of the fugaha' vis a vis imams, he says that there is no difference between fugaha' and imams as far as the governmental rights (ikhtiyarat-e hukumati) of both of them are concerned, but of course the status of the Prophet and imams are higher than fugaha's as far as their spiritual status (magamat-e ma'navi) is concerned. The fugaha' neither can inherit

6 Ibid., p. 60.
7 Ibid., p. 63.
8 According to Khomeini the spiritual status (fada'il-e ma'navi) of the imams are too high; in some cases even they are higher than of Prophets 'It is essential', says he, 'according to our faith to believe that no one can reach to the spiritual status of the imams (magamat-e ma'navi), not even angels and Prophets. In fact, according to our traditions, the Prophet Muhammad and imams existed before the creation of the universe in the form of light (nur) under the shadow of the Divine Throne. They have got superiosity over other human beings even in the sperm from which they grew and in their physical composition', Hukumat-e Islami, pp. 67-68. According to his gradation, the Prophet Muhammad is on the top of the hierarchy; next comes' Ali the Commander of the faithful and then come other imams; see ibid., p. 64.
the existential velayat of the imams, nor they can reach their position in this regard. By differentiating between the two kinds of the velayat of imams - namely velayat-e takvini (existential velayat) and velayat-e i'tebari (intrinsic velayat) - Khomeini tries to undo a major hinderance in determining the status of the fugah vis-a-vis the imams. Velayat-e ma'navi or velayat-e takvini is the exclusive rights of the Prophet and the imams; mortal human beings (insar-e 'adi) cannot reach that position as it is God given and intransferable. The velayat-e i'tebari is transferred to the fugah of Islam. In this regard the imams and the fugah are equal. Thus 'to think that governmental jurisdiction of the Prophet was greater than 'Ali or his governmental rights were greater than faqih is absolutely wrong'. Similarly, an official appointed by an imam possesses the same authority and power as the imam. He further says that God has given the fugah all the powers and authority in the present age that He had given to the Prophet and the imams. The government of faqih is an


10 Khomeini, op. cit., pp. 64-68 and passim. He further elaborates that the velayat-e ma'navi and velayat-e i'tebari may not be always present together in all the members of the house of the Prophet. There was for example Fatima, the daughter of the Prophet and the wife of the First Imam who possessed spiritual status, but she did not possess political power. See ibid., p. 68.
relative (i'tebari) and rational matter. It is an appointment, just like the appointment of a guardian for a minor. There is no difference between the guardian of minor and the guardian of the nation (gavvim-e mellat) as far as the functions and duties of both of them is concerned. 12

The fuqaha’s authority on behalf of the Absent Imam in certain matters, relating to juridical interpretations and tax collection had been based upon a de facto recognition. 13 The source of the authority was generally mass support than any juridical or doctrinal justification. 14 The position of 'ulama' although had always been crucial, particularly their position as interpreters of shari'a laws and collections of Khums. As a doctrinal proposition their position was not as clearly defined. It has not attracted the attention of the theologians as an independent doctrine either. As one author points out 'The notion of the Imam’s deputyship (in either specific cases or in the context of general agency) was little more than an obscure formula based on the sporadic claims of the 'ulama'. These claims were scattered throughout different chapters of fiqh, such as gada (judgement), jihād.

---

12 Ibid., pp. 64-65.
13 See chapter 2.
The most important problem before anyone who seeks to define the status of 'ulama' as deputies of the Imam in his absence is the problem of legitimacy. That is, what is the source of 'ulama's claim to be the na'ib (successor/diputy) of the Imam-e Gha'eb? The question can be studied from two perspectives. One what juridical status the Ithna' Ashari-Shi'i law confers upon the 'ulama; and the other, what power and authority 'ulama' practically wielded throughout their history.

There is no doubt that according to the Ithna 'Ashari Shi'ism the Prophet designated 'Ali as his wasi (legatee). All the imams were conferred that position by their predecessors. Then, at least, the last of the imams deputied four wukala' who acted in the name of the Imam getting legitimacy from him. But after them the tradition of the explicit designation of deputies and successors seemed to have come to an end. Modern scholars are

at disagreement on the question whether the Twelver Shi'i jurisprudence allows mujtahids to act as the deputies of the Hidden Imam. A staunch critic of this conception is Joseph Eliash. He writes:

Twelver Shi'i juridical principles do not vindicate an alleged designation of the 'ulama' by the Imams to wield the Imam's prerogatives. In fact according to the Twelver Shi'i doctrine of the Imamate, to claim any of the Imam's prerogatives is to commit a major sin. On the other hand, compared with the Sunni qadi and mufti, the mujtahid enjoys not only the privilege of ijtihad but also complete independence, in the Muslim juridical sense, from the political institution.... When pronouncing judgement, however, it cannot be said of the mujtahid that he is enjoying the Imam's prerogative of sitting in judgement, because, the Imam's judgement is infallible and irrevocable unless he declares that he has exercised dissimulation (taqiyya). The case is not similar with the mujtahid. His judgements are at all time fallible and may be revoked if proved wrong.

The attitude of the early Shi'i 'ulama' (mutaqaddimin) has been quite clear in this regard. Both previous and latter 'ulama' (mutakakhirin) agree on the principle that 'ulama' have not been conferred the status of the holders of authority (hujj) in clear

---


and unambiguous term. In his earlier writings Khomeini himself admits this in unequivocal words:

"The guardianship of the mujtahids (velayat-e mujtahid) has always been debated by the 'ulama' from the very beginning. Not only that there is a disagreement on whether the mujtahids possess the rights of the guardianship or not, rather there is a disagreement about their limits of velayat and areas of jurisdiction. This is one of the subjects of jurisprudence about which both (for and against) put their arguments.

Fully aware of this difficulty, Khomeini strove hard to provide juridical evidence to ascertain the legitimacy of the fuqaha' as the deputy of the Absent Imam. A major part of his book Hukumat-e Islami is devoted for this discussion. He goes to search the whole shi'i literature to find out every possible reference to the effect.

Khomeini attempts to prove the velayat of the faqih from the same verse of the Quran (4:59) by which the shi'i 'ulama' justify the legitimacy of the velayat of the imams. He strongly argues that if the verse establishes the velayat of the imams, it also establishes the velayat of the faqih by some token, for the verse is not applicable for a certain period but for all times.

18 Khomeini, Kashf-e Asrar, pp. 233-34.

19 'Verily Allah commands you to return the trusts to their owner (tuwaddu al-amânât) and that when you judge between men you judge with justice..."
He derives the inference from simple deduction: God appointed Prophets on the earth for the guidance of mankind, for He cannot spare mankind without guidance to fall in errors and sin. The Prophet appointed the Imam (Ali) for he cannot spare the community without the one who would guide it. Then imams appointed their successors one after the other for the same purpose according to the Qur'anic command of "return the trusts to their owners". Then how come the last Imam did not leave his successor for it would be against the command of God. Khomeini no doubt takes full advantage of well established Shi'ia maxim that God would not leave mankind without guidance. He points out that by "trust" (amanat), as appears in the verse, the Shi'i theologians mean the "trust of imamat". Similarly, hakamat bay al-nas tahkimun bi'l-'adl is addressed not to the qadi but to the political authority.

Khomeini, then mentions a number of Traditions to substantiate the above claim. According to him most of these Traditions are nass. He discusses each Tradition at length considering its merit, demerit and authenticity. Different versions of these traditions are also taken into consideration. Following

20 Khomeini, Hukumat-e Islami, pp. 107.

21 Ibid., p. 108, ff.
are those traditions:

(1) 'Ali says the Prophet told him: O God, Have mercy on my successors (Khulafā'I). He repeated it thrice. He was asked: Who are your successors. He said: They are those that come after me, transmit (yara'ün) my Traditions and practice, and teach them to the people after me (Yu'allimūnha al-nāass min ba'di). 22

(2) Imam Musa has said: When a believer (mu'min) 23 dies, there appears crack in the fortress of Islam which nothing can repair. Because the fuqahā' are citadel of Islam (fuqahā' hisn al-Islam). 24

(3) The Prophet has said: Fuqahā' are "trustees" of prophets (amnā' al-rusul) until they enter into the world. 25

(4) Imam 'Ali said to Shurayh a qadi: O Shurayh the seat you occupy can be occupied by none but Prophet or his legatee (wasi) or a sinfull (shaqi). 26

22 This Tradition is mentioned by Khomeini as the clear proof of delegation (nass) of the said status of the fuqahā'. It is, therefore, dealt by him at some length. He mentions different versions of the tradition as appeared in various sources. In some sources the last words fa yu'allimunah al-nas min ba'di (those who teach it to the people after me) has not occurred. Khomeini tries to emphasize the validity of those last words and tries to prove that in those versions in which these words have not occurred happened to be by chance (see ibid., pp. 75-77).

It is interesting to note that in Kashf-e Asrar he mentions the version which does not contain these words. He quotes it from Awa'īd al-Ayyam of Mulla Ahmad Naraqi, see Kashf-e Asrar, p. 238. This tradition is also used by many theorist in recent past including Valīd-e Behhehani, Mulla Naraqi and Shaykh al-Ansari.

23 Khomeini emphasizes a different version of the same Tradition which mentions al-mu'min al-faqih instead of only al-mu'min, ibid., pp. 82-83.

24 Ibid., p. 82.

25 Ibid., pp. 87-88.

26 Ibid., p. 47.
(5) Imam Ja'far al-Sadiq has said: Refrain from governance (al-hukūma) for, it is [reserved] only for an imam, who knows laws and procedure of judgement (al-‘ālim bi‘l qadā‘) and who do justice among the believers (al-‘ādil fi‘l-muslimin) and for a prophet or a legatee (wasi‘) of the Prophet .... 27

(6) 'Isa bin Ya'qub told: I asked Muhammad bin Uthman al-‘Amari 28 to deliver a letter to the Twelfth Imam in which I had asked about certain problems (mas‘ala). A reply (al-tawqī‘) written in the hand of the Master of the Age was returned by Muhammad b. 'Uthman al-‘Amari) to me which said: In case of the problems occurring under new circumstances (al-hawādith al-waqi‘a) return towards the narraters of our Traditions (rawāh hadithuna); they are my proofs (hujejati) upon you and I am the proof of Allah.... 29

27 Ibid., p. 100.

28 The first wakil appointed by the Hidden Imam.

29 Ibid., This is another important Tradition most often quoted to prove 'ulama's legitimacy. Shaykh Murtaza al-Ansari and Mulla Ahmad Naqira particularly, have relied heavily on it. This tradition has been quoted by Khomeini in Kashf-e Asrar also. See Kashf-e Asrar, p. 237.
(7) 'Umar b. Hanzala said to Ja'far al-Sadiq. 30 Two men of our community dispute about a debt or inheritance and they ask the temporal government (al-sultan) and the qadis for a judgement. Is that lawful? The Imam replied: Whosoever asks them for a judgement ... He is asking the taghut (satan) to give judgement, and whatever judgement is given to him, verily it is taken as unlawful ....

Ibn Hanzala asked: What should they do then? The Imam said: They should look for one among you who has related our Tradition, has examined what is lawful and what is unlawful according to us, and has known our decrees. They should accept him as a judge, for I appointed him a judge over you. 31

(8) Imam Ja'far al-Sadiq said: whenever a dispute about anything in taking or giving arose among you, do not refer the matter for judgement to any of those malactors (rulers/qadis). You can make

30 This Tradition is known as "maqubla 'Umar bin Hanzala" and the most quoted tradition with regard to establish 'ulama's legitimacy. It is also one of the earliest Traditions quoted by the 'ulama of medieval period to prove the rights of 'ulama as judges (qadis). Khomeini has given it a special treatment. The Tradition has a number of versions; the content and size of the tradition has varied. Khomeini has given only one version from Wasā'ī al-Shi'a of al-Amuli:

31 Cf. Khomeini, op. cit., pp. 116-117. Tradition has been mentioned in Kashfa-e Asrar, on p. 238.
a person (faqīh) among you who knows permissible and prohibited
according to us, because I have made him judge (qādī) upon you...32

(9) Imam Ja'far related the Prophet has said: ...'Ulama are heirs
of the Prophets (al-'ulamā' wurathā' al-‘Ambiya‘). The Prophets do
not bequeath but knowledge ...33

(10) According to Fiqh Radewi: In the present age, the status of
faqīh is like the status of the Prophets of Bani Israel.

(11) The Prophet has said: The 'ulama' of my ummat are like
the Prophets before me.

(12) 'Ulama are rulers (hukkām) over people.34

(13) Imam Husayn said: O' ulama... you are devoted peoples ...
have you not earned respect and prestige because of men's hope
that you will implement God's laws? ...The administration of the
country, the issuing of judicial decree, and the approving of
legislative programs should actually be entrusted to religious
scholars who are the guardian of the rights of God and knowledgeable
about God's ordinances ... All proposed regulation would be

32 Cf. ibid., p. 123.

33 Cf. ibid., p. 129. This Tradition is known a Sahih al-
Wadāh. Khomeini has mentioned it as a clear pass for the desig-
nation of 'ulama as the deputies of the Imam.

34 Cf. ibid., pp. 142, 143-44 and 144 respectively.
These Tradition are mentioned by Khomeini as supportive evidences.
He did not argue by them.
brought to you for your approval and for you to issue. Authority would lie in your hands. But you allowed the oppressor to take away functions and permitted government, which is supposed to be regulated by the provisions of the shari'a, to fall into their hands. . . . 35

What Khomeini intended to infer from the above set of Traditions can be summarised thus:

1. The Fugaha' are like the prophets meaning thereby that they are the successors of the Prophet (Muhammad), at least in regard to their duties and functions, if not in status.

2. The Fugaha' inherit the power of safeguarding the religion and guiding the community on behalf of the A sent Imam.

3. Their duties include not only interpretation of the revelation but also establishment of government for the welfare of the community.

4. The establishment of a just government is as incumbent upon the Fugaha' as the interpretation of the shari'a.

Khomeini emphasises the point that the meaningfulness and effectiveness of the term Khulafā'ī (my successors") is not in anyway less important than the term 'Ali Khalifatī; 36 ('Ali is my successor). By this the Shi'i theologians establish the explicit designation of 'Ali as Prophet's successor. In both the places the term 'Khalīfa' occurs with the same meaning and connotation. For him, it is very important that the Prophet used Khalīfa,

36 Ibid., p. 81
the personal noun rather than 'Khilafat', so that the successor could be more definitely specified. He wonders why people considered 'Ali Khalifat (Ali is my successor) as an explicit nass meaning to designate the successor of the Prophet but did not derive the same meaning from the above tradition (i.e., al-a'immakhulafai, 'ulama' are my successors) which is in no way different in context, emphasis and words, from other. More important, according to him, is the phrase yu'allimun al-nass "(they teach the people)". He argues that here the Prophet clearly meant fugaha' and not Traditionalists who just narrate the tradition and do not possess the ability of deducing ordinances (ahkam) from them.

By al-fugaha' hisan al-Islam' (fugaha' being the citadel of Islam), he tries to establish power and authority of the fugaha' in matters of religion, especially in matters of safeguarding the creed and maintaining Islamic order. This according to Khomeini is the most essential duty of the fugaha'. This is an absolute obligation (wajib-e motlaq) not conditional (wajib-e mashrut). Because the fortress of Islam cannot be safeguarded by protecting only one part of it, therefore the 'ulama' should take up the

37 Ibid.,
38 Ibid., pp. 76-78.
39 Ibid., p. 82.
40 Ibid., p. 85.
responsibility of protecting the whole of Islam including its political aspect, i.e., the rule and the governance of the community. The whole of Islam could only be protected when the whole of it is implemented.  

By the "trusteeship of 'ulama'," al-fugahā' amanānā'al-rusul, he tries to prove that fugahā' inherit the duties and functions of the prophets in totality. Because the Prophets were not sent for only the purpose of interpreting the shari'a (mas'ala go'i)

The most important duty of the Prophets was to establish a just social order through the implementation of laws and ordinances of Islam. So the fugahā' are also responsible for establishing a government and implementing the shari'a.  

The next two Traditions according to Khomeini define faqih as wasi of the Prophet. In typical polemic style Khomeini argues that according to these Traditions the only deserving persons for the government are the Prophet or his wasi i.e., according to this Tradition the wasi of the Prophet are only those (a) who know the laws and deliver judgement ('alim) (b) they are just ('ādil) among the believers and (c) control the leadership

41 Ibid., pp. 84-85.
42 Ibid., pp. 89-90.
(Imam, leader). Thus fūqahā' are the only persons who come true upon these three criteria.\textsuperscript{43} Instead of traditional interpretation of hawādith al-waqi'â which means new juridical problems concerning day to day life, Khomeini explains it as "new problems of socio-political life". He argues that during the age of living imams everybody knew that they are supposed to go to the fūqahā' to consult about their juridical problems. So it is quite clear that the Imam was asked about the new socio-political problems, as to what was to be done in his absence. "When certain problems relating to the collective life emerge about which there was not a precedent in his life".\textsuperscript{44}

Hadith-e Hanzala, known as hadith maqbūla is the Tradition most frequently quoted by those who sought legitimacy for the fūqahā' most probably on account of its explicit and authoritative nature. Khomeini asserts that the suggestions of the Imam 'a'īfar Sadiq were not for an particular case or for limited time. They are rather general commandments (ahkām-e kullī).\textsuperscript{45} Together with the next quoted tradition he emphasizes that the Imam's

\textsuperscript{43} \textit{Ibid.}, pp. 99-101.

\textsuperscript{44} \textit{Ibid.}, pp. 103-104.

\textsuperscript{45} \textit{Ibid.}, p. 118.
decree to return to the ḥujjah, and not to the rulers does not apply only to the legal problems (qadawat), it rather incorporates the problems concerning government and implementation (hukumati va ijra'i). According to him through this tradition Imam Ja'far specified the status of 'ulama' and ḥujjah. Khomeini further asserts that the ḥujjah once appointed by imams could not be suspended or terminated. Therefore, the seat of government and judgement blessed by the imams are secured for the ḥujjah. It is possible to terminate one individual for the office, but it is impossible to banish the office itself.  

Refuting the view that by 'heir of the Prophets' (al'ulamā' wuratha'al-ambiya') as occurs in sahih-e qadah, imams are meant not 'ulama', Khomeini puts forwards precisely the following arguments:  

1. Imams do not inherit knowledge from the prophets; they got it from God. The tradition of the prophets are inherited by 'ulama', not imams, so by 'ulama' who inherit the traditions of the Prophet as indicated by the tradition scholars of Islam are meant, not imams.

---

46 Ibid., pp. 124-25.

2. The characteristics described in the Tradition conform to the characteristics of the 'ulama' not imams.

3. Several other Traditions conform to the same statement. 

Other Traditions are quoted only to support the above mentioned arguments and strengthen the conception of velayat-e faqih.

What generally the Shi'i theologians of the past had inferred from some of the above mentioned Traditions was to provide legitimacy for the fugahā' in certain matters: interpretation of shari'a, collection and distribution of religious taxes, power of judgement in disputes and power of implementation of a few of criminal laws. Khomeini himself has mentioned some of these Traditions in Kashf-e Asrar. But they are mentioned to prove other things. For instance, by the Tradition of hadith al-wājib he established the following (taqlid) of the live mujahid, the Tradition that says qādis to be the deputies of imam is quoted to prove 'ulama's right as judges.

As already mentioned speculations that 'ulama' are the deputies of the Imam developed during the Buyid period and strengthened.

48 Cf. ibid., pp. 131-140.
49 Khomeini, Kashf-e Asrar, pp. 246-47.
50 Ibid., pp. 376-77.
during the Safavid period. But the idea of 'ulama' being political leaders has not been conceived earlier. Even during the Safavid period 'ulama' emphasised their role as judges and collectors of religious taxes; they did not assert their share in politics and power. They were chiefly concerned with adjusting themselves with the rulers whom they thought as illegitimate. One of the earliest theologians to envisage a political role of 'ulama' in some respect was Shaykh 'Ali b. Husayn al-Amili al-Karaki (d.1534) known as al-Muhaqqiq al-Thani. His emphasis upon a political role of 'ulama' was due to his strong conviction regarding the notion of "enjoining the right and forbidding the evil" (amr bi'l-ma'ruf wa nahy an'il-munkar) which he thought was incumbent upon all Muslims. Since then some Shi'i mujtahids asserted a more active role in public life. He generally discussed this subject under the notion of amr bi'l ma'ruf wa nahy an'il munkar. But they

51 On different attitudes of Safavid 'ulama' towards the rulers and evolution of ideology in this regard see AKS Lambton, State and Government in Medieval Islam, p. 268 ff. "Luis Custodiet Custodes", Studia Islamica, VI (1956), pp. 130 ff.

did not make any political claim as such. Al-Karaki also thought that mujtahids position is above the ruler and the latter should be subordinate to the former. Shahid al-Thani's theory of nayabat-e 'amma also had little political implications as he thought revolt against the ruler was strictly against the doctrines of the Twelver Shi'is.

The political influence of 'ulama' during the Safavid period was considerable given to the socio-political situation, personal influences of certain 'ulama' and the fact the state professed Ithna 'Ashari faith as its official religion. Yet the role of 'ulama' vis-a-vis political authority was by and large advisory, still subservient. They served rulers as subordinates on different official posts and despite their mass following, politically they derived authority from the rulers. They did not enjoy share in the matters of government in real term. The triumph of the akhbaris also disallowed progress in juridical speculation to raise 'ulama's status during this period.

The eighteenth century saw some structural changes in the position and status of the 'ulama' particularly during the second

53 Lambton, op. cit., p. 282.
56 Lambton, op. cit., p. 284 ff.
half of it when mujtahids position was raised with the triumph of usulis over the akhbaris. Then in the nineteenth century took place the evolution of the conception of marja'-e taqlid, according to which a single mujtahid was supposed to be the final authority in religious matters.\[57\]

Khomeini's concept of the government of faqih-e 'adil can also be studied in comparison with the institution of marja-e taqlid. During the Qajar period 'ulama's position was raised as the rulers started getting formal authorization (izn-e-sultanat) from them to rule over the country. The establishment of the Qajar dynasty coincided with the emergence of usuli school of fiqh. Aqa Valid-e Behbehani (d, 1793) led the triumph of usulis over akhbaris in Najaf; he is therefore known as mol'assis (founder). Usuli resurgence revived the practice of juridical speculation and widened its scope consequently enhancing mujtahid's functions. The triumph of the usulis gave a new life not only to the theological and juridical speculations, it also resulted in an increased emphasis upon the political claims of the 'ulama'.\[58\] Aqa Vahid-e

\[57\] The nineteenth century also witnessed a significant development in Shi'a theology, i.e. the concept of the alamiyyat (the most learned). The idea, though in a very rudimentary form, was present in the shi'i traditions, it was emphasized for the first time by al'Amuli. By the nineteenth century the concept had got perfect roots and was well established in the consciousness of the people. Shaykh Najafi-Isfahani (d, 1849) and his successor Shaykh al-Ansari (d, 1864) were well accepted marja taqlids.

\[58\] See Keddie, The Roots of Ulama's Power in Modern Iran, pp. 223-225.
Behbehani tried to introduce the idea of faqīh as the caliph of the Prophet (Khalīfa al-rasūl), but he did not elaborate on it. Behbehaini claimed the rights of the velayat of the mujtahid on the basis of his knowledge. He says:

It is proverbial among 'ulama' that the gate of acquiring knowledge concerning religious ordinances (ahkām) is closed (upon the absence of the Imam). How? We see a large number of ahkām which become known after effort. This is true despite the fact that effort leads to speculative reason (zann) which is neither proof (majh) nor beneficial; despite the fact the Akbaris claim that the gate of acquiring knowledge is not closed and it is a matter of controversy, and despite the fact that in many cases we know things without searching, because they are obvious. We say that no speculations are proofs, nor any ijma' (which is reversible by contradictory ijma') nor even self-evidence (bidaha) amount to absolute proof. It is only the mujtahids' speculation acquired after endeavour (ijtihād) that weigh as proof.

However, the institution of marja'-e taqlid could provide the 'ulama' only a religious role, politically it was successful to the extent that 'the monarch was theoretically bounded, no less than his subjects, to submit to the authoritative guidance of mujtahids'.


60 Cited in Moussavi, op. cit., p. 38.

Mulla Ahmad Naraqi (d. 1830) was the first who used the term *velayat-e faqih* and dealt it as a separate doctrine in his well known book *Awa'd al-'Ayam*. He writes:

Our purpose here is to expose the jurists' vilayat who are the Imam's deputies and rulers during the absence of the Imam, and to determine whether their vilayat is general ('amma) in the same way as it was principally presumed for the Imams. In short, what is their vilayat about. As for the jurists duty over people's affairs and over what they have full and all-embracing vilayat we ....by divine grace .... say that a just jurists' vilayat lies in two matters. First, every vilayat possessed by the Prophet and the Imams (who were the sovereigns and pillars of Islam) is bestowed upon the jurists as well, except what is excluded by juridical proof such as ijma' (consensus) or nass (established text).... Secondly, every action concerning the people's faith and worldly affairs is necessity and inescapable according to reason and habit or according to shari'a (law).

Khomeini did not hesitate to accept the influence of Naraqi regarding the theory of *velayat-e faqih*. It can be said that Khomeini's ideas are a modified and improved form of Naraqi's theory. Naraqi has dealt with the theory of *velayat-e faqih* as an independent topic. He compiled all traditions and juristic reasonings known to him to confirm the 'ulama's rights and duties in respect to *velayat*. Khomeini proceeds in a similar way in his argumentation, especially in the case of the legitimacy of the fuqaha' as the deputies of the Imam which is the most crucial point in this regard.

63 See Khomeini; *Kashf-e Asrar*, pp. 237, 238; *idem, Hukumat-e Islami*, pp. 172-73 and passim.
Shaykh Murtada al Ansari, a disciple of Naraqi further developed the thesis of his teacher. Nevertheless he disagreed with Naraqi on various points. According to Murtada al-Ansari, there is no doubt that 'ulama' are delegated with the status of deputiship of the Hidden Imam. In his book Kitab al-Makasib, he broadly divides the function of 'ulama' into three parts: (1) ifta (2) hukuma, and (3) walaya al-tasarruf fi'l-awwal wa'l anfus. He believed that absolute authority over the people in both temporal and spiritual matters falls within the jurisdiction of the imams. But statutory and discretionary penalties (hudud wa ta'zirat) and solution to unforseen events (al-hawadith al wagi'a) are specifically delegated to the faqih in absence of the Imam. He believed that 'ulama' do not inherit each and every rights and function of the imams. Moreover, he said that it is absurd to claim that the 'ulama' are entitled to obedience in all spiritual and temporal matters.

Thus although the political activism among the 'ulama' and a more political role for them was 'visualized during the ...
eighteenth-nineteenth century none has thought of a direct government of 'ulama'. What previously they wanted was that Kings were needed to carry out certain tasks, but should follow the cause of the 'ulama'. 68

The role played by 'ulama' in Tobacco movement (1891-92) and subsequently in mashruṭa is considered as revolutionary. 69 But in the Constitutional movement what the 'ulama' at the most wanted was nothing more than a constitutional monarchy in which they would play a consulatory and advisory role to the king and government. Although they demanded a supervisory committee to be formed which could regulate the new promulgation of laws in accordance with the laws of shari'a they did not demand direct participation in government and administration. Nuri distinguished velayat of the faqih from vekalat. While by velayat he meant the 'ulama's jurisdiction of interpretation of religious laws, by vekalat he meant representation in government. According to him only velayat is the jurisdiction of 'ulama vekalat does not fall within their jurisdiction. 70

It is interesting to note that Khomeini himself had no idea of the faqih being head of state in his previous writings even

68 Norman Calder, op. cit., p.16.

69 Hamid Algar, Religion and State in Iran 1785-1905; Keddie, Roots of Ulama's Power in Modern Iran, p. 227.

though he strongly believed in the guardianship and governance of *fugahā'*.

He wrote: 'When we say that in this age guardianship (*velayat*) and governance (*hukumat*) belong to *fugahā'*, we do not mean that *fugahā'are kings, ministers, officers*. He did not go, obviously, beyond the position adopted by Shaykh Murtada al-Ansari and the Constitutionalist 'ulama' in this regard. He consistently used the word *hukumat* (governance) for the 'ulama' along with *velayat* (emphasis added), but by *hukumat* he certainly did not mean a government of the *fugahā* with a *faqīh* as the head of the government as he asserts in his later writings. By *hukumat* he just meant the role of 'ulama' as qadis and executors of penalties (*hudud* and *ta'zirāt*). Answering a self-posed question: Is it necessary that the government should be in the hands of *fuqahā'? There may be a government of anyone but the ruler should obtain permission (*ijāza*) from the *fugahā'. However, the *fuqahā' could not give *ijāza* to any ruler they liked. Such a power was not even held by the Prophet and imam. They could give *ijāza* to only that ruler who did not violate the laws of God. He nevertheless, thought of

72 Ibid., p. 239; also p. 281 and pp. 294-295.
73 Ibid., p. 239.
a consultative assembly of 'ulama' which would help the king in implementation of shari'a laws. According to him velayat and hukumat is fulfilled if such an assembly is constituted:

An assembly should be constituted of the mujtahids who knew the ordinances of God, are just; who are not captive of the material self, and who wanted nothing except the welfare of people and implementation of Gods commandments (i'ra'-'e hukm-e Khoda). They should elect a just ruler (sultan-e 'adil) who does not contradict the laws of God, who keeps himself away from tyranny and injustice, and who does not usurp the life and property of people.

In Kashf-e Asrar, Khomeini asserted that the clergy should not assume any other preoccupation than the religious i.e. explanation of tawhid and taqwā (Oneness of God and purity), education and propagation of scriptural laws, purification of people's morality. Regarding the role of 'ulama' vis-a-vis political authority he said: 'I have made it clear that when they, the mujtahids say that the government should be in the hands of fāqīh they do not mean that the fuqaha should be kings, ministers. They, rather, mean that the fāqīh should have legislative (quvvat-e taqniniyya) and executive (quvvat-e mujriyya) powers. He strongly refuted the view that the ruler should be a fāqīh.

74 Ibid., p. 234.
75 Cf., ibid., pp. 263-64.
76 Ibid., p. 294.
77 Ibid., p. 295.
Thus while in Kashf-e Asrar he explicitly mentioned that it is not obligatory that the fuqaha' should have the reign of power in their hands, in Hukumat-e Islami he emphatically asserts that the only legitimate government possible in the ghaybat is that of faqih-e 'adil and that the 'ulama' should keep each and every department of government and administration in their hands. Moreover, according to him the government of faqih-e 'adil is God-given (rabbâni). That is, the faqih-e 'adil derives its legitimacy from God and not from public as in the case of modern democracy; nor from his privilege of interpreting shari'a as the traditional 'ulama' claimed. He thus goes far beyond the traditional point of view that the 'ulama's claim for guardianship of people was due to their knowledge of shari'a. According to him obedience of the faqih-e 'adil upon the believer is obligatory because it is a matter of faith. Khomeini does not believe in hierarchy of mujtahids. He made it quite clear that the fuqaha' are not "absolute guardians" (vali-ye motlag) in the sense that

78 Khomeini, Hukumat-e Islami, p. 171.
79 Ibid., p. 64. But the faqih-e 'adil does not acquire a super natural status. The velayat does not create extra-ordinary status for anyone. The faqih-e 'adil, inspite of his rule over the people still remains a mukallaf and fallible. His authority and power is functional and relative (i'tebari). According to him, it is not necessary for all officials of the government to be the faqih, nor it is necessary that they should possess a very high religious status in juristic and legal deduction. Cf., ibid., pp. 64-65.
they possess **velayat** over the other **fugaha'** of their age and can appoint or discharge them. ⁹⁰ According to him this is the only difference between the governmental powers (**umur-e hukumati**) of the Prophet and the imams and that of the **faqih-e'adil**. While the former can appoint or discharge a guardian, the latter cannot do so.

Thus we see that Khomeini's theory of **velayat-e faqih** is a marked departure from traditional point of view. He envisages a far more greater role and status of the 'ulama' compared to the role and status conceived by the Shi'i theologians of the past as well as present. It is also worthy to note that Khomeini's ideas in this regard have considerably changed from his **Kashf-e Asrar** to **Hukumat-e Islami**.

---

⁹⁰ Ibid., p. 66.