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# SHIITE CRITICISM OF THE *WELĀYAT-E FAQĪH*

Mariella Ourghi

## *Abstract*

The controversial discussion of the theory of the *welāyat-e faqīh*, which was established in the constitution of the Islamic Republic in 1979, has since then never come to an end. The debate about that doctrine even seems to have intensified after the death of Āyatollāh Khomeinī in 1989 and especially during president Khātāmī's period of office (1997–2005).

The theory of the *welāyat-e faqīh*, which had been expounded by Khomeinī in his work on the Islamic system of government, says that exercising the supreme political power is restricted to a religious jurist. The concept of the *welāyat-e faqīh* was not invented by Khomeinī. But until today Shiite scholars differ over the extent of authority entitled to the jurist. The main argument of the critics is that dictatorship would be predetermined if only the clergy had a legitimate claim to holding the supreme political office.

While predominantly juridical objections against the *welāyat-e faqīh* were raised in the years up to Khomeinī's death, the criticism tended to be embedded in a wider scope since the early 1990s. Critics now started pleading for a democratical system based on the Western model which they consider to be compatible with Islamic values. At the same time, they deny the clergy's monopoly on interpreting the Islamic sources, by which they also deprive the clerics of their claims to leadership. Both reformist clerics and religiously oriented intellectuals subscribe to that opinion. Although Iranian critics are the article's focus of attention, non-Iranians will also be taken into account.

The reelection of Moḥammad Khātāmī as president of the Islamic Republic of Iran in June 2001 showed the desire of most Iranians for political and social reforms. To what extent Khātāmī is in a position to reform the political system of the Islamic Republic remains uncertain in the face of his scanty success during his first period of office. The core of the Iranian constitution, the *welāyat-e faqīh*, is still one of the main issues in the discussions between the conservative forces around the leader Khāmene'ī and the reformists.<sup>1</sup>

The theory of the *welāyat-e faqīh*, which had been expounded by Āyatollāh Khomeinī in his slim but important work on the Islamic system of government, says that exercising the supreme political power is restricted to a

1 The two terms "conservatives" and "reformists", which provide merely a rough division of the political spectrum, are not only used by the international media, but also in Iran itself. See Johannes REISSNER, *Parlamentswahlen in Iran: Auftakt zum Ende der Islamischen Republik?*, Ebenhausen 2000 (SWP-aktuell, No. 53/March 2000):1.

jurist (*faqīh*).<sup>2</sup> Nevertheless, the *welāyat-e faqīh* was not Khomeinī's invention. In works on *fiqh* from earlier centuries, the term *welāyat-e faqīh* usually appears in the context of discussions of the authority of the jurist to have disposal over moneys.<sup>3</sup> But even in its narrower sense of exercising political power, the term had already been used in the nineteenth century by Aḥmad an-Narāqī (d. 1829).<sup>4</sup> However, until today Shiite<sup>5</sup> scholars differ over the extent of authority entitled to the jurist. Most of the clerics still adhere to the view held by Shaikh Murtaḍā Anṣārī (d. 1864) who included the following aspects into the authority of the *faqīh*: supervision of the jurisdiction and the religious endowments, holding the property of the hidden imam in trust as well as guardianship of minors and insane.<sup>6</sup> Especially among high-ranking clerics Khomeinī's theory of the *welāyat-e faqīh* met with disapproval, and most of them subscribe to Anṣārī's definition of the authority of the *faqīh*.

As the *welāyat-e faqīh* was embodied in article 5 of the Iranian constitution of 1979 and therefore the country faced with the immediate consequences of the doctrine, developments in Iran will be the central topic of this contribution.<sup>7</sup> Both numerous members of the clergy and some religiously

- 2 Khomeinī backs up his theory by quoting numerous traditions and verses from the Koran. A central *ḥadīth* is the *maqḥūla* (a tradition which is accepted as reliable) of ʿUmar b. Ḥanzala who is said to have asked Imam Djaʿfar aṣ-Ṣādiq whether Shiites were allowed to consult the sultan or a state judge in case they got into an argument. Basically by referring to this tradition Khomeinī authorizes the *faqīh* to exert political rule. He interprets the word *ḥākim* occurring in the text as "ruler" in the political sense. For his explanation of Islamic government see al-Imām al-KHUMAINĪ, *al-Ḥukūma al-islāmiyya*, Beirut 1998:78–160. For an examination of Khomeinī's evidence see Hamid MAVANI, "Analysis of Khomeini's Proofs for *al-Wilāya al-Mutlaqa* (Comprehensive Authority) of the Jurist", *The Most Learned of the Shiʿa. The Institution of the Marjaʿ Taqlid*, ed. by Linda S. Walbridge, Oxford 2001:183–201.
- 3 Roy P. MOTTAHEDEH, "Wilāyat al-Faqīh", *The Oxford Encyclopedia of the Modern Islamic World*, vol. 4:320–322, here p. 321.
- 4 Aḥmad an-NARĀQĪ, *Wilāyat al-faqīh*, Beirut 1990:69ff.; for an-Narāqī's conception see also Ahmad Kazemi MOUSSAVI, "The Establishment of the Position of Marjaʿiyyat-i Taqlid in the Twelver-Shiʿi Community", *Iranian Studies* 18 (1985):35–51, here pp. 40f.; Aḥmad al-KĀTĪB, *Taṭauwur al-fikr as-siyāsī ash-shīʿī min ash-shūrā ilā wilāyat al-faqīh*, Beirut 1998:399f.
- 5 The term "Shiites" in this contribution always refers to Twelver Shiites.
- 6 Shahrugh AKHAVI, "Contending Discourses in Shiʿi Law on the Doctrine of *Wilāyat al-Faqīh*", *Iranian Studies* 29 (1996):229–268, here p. 237.
- 7 Article 5 says that during the occultation of the Lord of the Age the mandate to rule (*welāyat-e amr*) and the imamate (*emāmat-e ommat*) devolve upon the *faqīh* who is just

oriented lay intellectuals harshly criticized the *welāyat-e faqīh*. Only when non-clerical thinkers also argue in an explicitly Islamic way, their criticism will be considered relevant in Muslim societies like the Iranian. Thinkers denying the existence of God or – within a Shiite environment – the importance of the imamate can easily be excluded in a traditionally Islamic society, because the faithful probably would not take such opinions seriously. For reasons of space, the arguments of non-Iranian critics of the *welāyat-e faqīh* cannot be dealt with here in detail. Instead, the paper will concentrate on some high-ranked clerics and intellectuals who are well-known beyond the Shiite world, too. The criticisms worth mentioning all date from the two and a half decades having passed since the revolution, the translation of the theory into action being not at all predictable before that.

The main argument of the critics is very obvious: By the fact that only the clergy is entitled to holding the supreme political office, dictatorship seems to be predetermined. But in the face of the oppression of dissidents, which began soon after the revolution, only few dared to express their concerns openly. Those who did, voiced their criticism mainly before the assembly of experts<sup>8</sup> concluded its deliberations for the constitution on 15 November 1979. Āyatollāh Moḥammad Kāẓem Sharīʿatmadārī (1905–86) expounded his attitude towards the *welāyat-e faqīh* before the formation of the assembly of experts in a series of lectures in Mashhad.<sup>9</sup> He feared that the *welāyat-e faqīh* would enable the ruling clergy to ignore the interests of the

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(*ʿādel*), pious (*bā taqwā*), acquainted with the circumstances of his age (*āgāh be zamān*), courageous (*shodjāʿ*), possessed of administrative ability (*modīr wa modabber*) and recognized and accepted as leader by the majority of the people (translation after Hamid ALGAR, *Constitution of the Islamic Republic of Iran*, Berkeley 1980:29f.).

8 The assembly of experts (*madjles-e khebregān*), which drew up the Constitution in the late summer and autumn of 1979, and the assembly of leadership experts (in Persian also *madjles-e khebregān*), which elects the *rahbar*, must not be confused. For the formation and the tasks of the two organs see Said Amir ARJOMAND, “Constitution of the Islamic Republic”, *Elr*, vol. VI:150–158, especially pp. 151f. and 155; id., “Authority in Shiism and Constitutional Developments in the Islamic Republic of Iran”, *The Twelver Shia in Modern Times. Religious Culture and Political History*, ed. by Rainer Brunner/Werner Ende, Leiden/Boston/Köln 2001:301–332, here pp. 304–307; for more details about the assembly of experts of 1979 see Asghar SCHIRAZI, *The Constitution of Iran. Politics and the State in the Islamic Republic*, London 1997:29ff.; Shaul BAKHASH, *The Reign of the Ayatollahs. Iran and the Islamic Revolution*, London 1985:81f.

9 SCHIRAZI, *Constitution*:48, note 27.

nation and to establish dictatorial rule. The principal goals of the revolutionary opposition movement had been the overthrow of the Shāh regime and the establishment of democracy.<sup>10</sup> But the embodiment of the *welāyat-e faqīh* in the constitution would jeopardize exactly these goals. In Sharīʿatmadārī's view, an Islamic republic is a democratic state based on the sovereignty of the people.<sup>11</sup> Similar arguments were given by the Āyatollāhs Seiyed Maḥmūd Ṭāleqānī (1911–79)<sup>12</sup> and Nāṣer Makārem Shīrāzī (b. 1929)<sup>13</sup>, who were both members of the assembly of experts, furthermore by the Āyatollāhs Abū l-Faẓl Mūsawī Zandjānī<sup>14</sup>, Bahāʿ ad-Dīn Maḥallātī (d. 1981) and ʿAlī Tehrānī<sup>15</sup>. Mehdī Bāzargān (1907–95), co-founder of the Liberation Movement of Iran (*Nahẓat-e āzādī-ye Īrān*; founded in 1961)<sup>16</sup> and prime minister of the provisional government from February until November 1979, declared as late as in October 1980 that the clergy abused religion under the pretext that religion and politics are inextricably linked with each other.<sup>17</sup>

- 10 Even in Western political science, there is no generally accepted and unanimous opinion about the features of democracy. Attempts to give a definition normally emphasize one of the features as being characteristic of democracy such as sovereignty of the people, equality, separation of powers, multi-party system etc. See Bernd GUGGENBERGER, "Demokratie/Demokratiethorie", *Lexikon der Politik*, vol. I: Politische Theorien, ed. by Dieter Nohlen/Rainer-Olaf Schultze, Munich 1995:36–49, here p. 36. The statements of most critics of the *welāyat-e faqīh* suggest that they lay emphasis on the sovereignty of the people in their understanding of democracy.
- 11 David MENASHRI, "Shiʿite Leadership: In the Shadow of Conflicting Ideologies", *Iranian Studies* 13 (1980):119–145, here p. 125.
- 12 Mangol BAYAT, "Mahmud Taleqani and the Iranian Revolution", *Shiʿism, Resistance and Revolution*, ed. by Martin Kramer, Boulder/London 1987:67–94, here p. 84.
- 13 Shahrugh AKHAVI, "The Ideology and Praxis of Shiʿism in the Iranian Revolution", *Comparative Studies in Society and History* 25, No. 1 (1983):195–221, here p. 215; Said SAFFARI, "The Legitimation of the Clergy's Right to Rule in the Iranian Constitution of 1979", *British Journal of Middle Eastern Studies* 20 (1993):64–82, here p. 75.
- 14 AKHAVI, "Ideology and Praxis":215.
- 15 Michael M. J. FISCHER, "Imam Khomeini: Four Levels of Understanding", *Voices of Resurgent Islam*, ed. by John L. Esposito, Oxford 1983:150–174, here p. 163.
- 16 For the role of the Iranian Liberation Movement as "loyal opposition" see H. E. CHEHABI, *Iranian Politics and Religious Modernism. The Liberation Movement of Iran under the Shah and Khomeini*, London 1990:278–304. The Liberation Movement was prohibited by the Iranian judiciary in March 2001.
- 17 CHEHABI, *Iranian Politics*:287.



Apart from such objections, which were predominantly raised in the period before the ultimate consolidation of the Islamic Republic<sup>18</sup>, we can distinguish two main lines of argument in the more than two decades having passed since the clerical regime came into existence. Khomeinī's death in June 1989 can be regarded as an approximate break in this process. In the first phase, critics gave predominantly religio-juristic reasons in order to reject the institutionalization of the *welāyat-e faqīh*<sup>19</sup>, whereas in the 1990s the criticism of the *welāyat-e faqīh* tended to be embedded in a wider scope, namely the rejection of the clergy's monopoly on *idjtihād*, which might result in a far-reaching change of the status of the whole Shiite clergy.

The first and fundamental objection often made by critics both inside and outside Iran is that the mandate or authority of the *fuqahā*<sup>20</sup> during the occultation (*ghaiba*) of the twelfth imam cannot be extended beyond the religio-legal framework to include government. This objection to the *welāyat-e faqīh* has been voiced by many high-ranking Iranian clerics such as Sharī'atmadārī, Ḥasan Ṭabāṭabā'ī Qomī, Šādeq Rūḥānī, Aḥmad Zandjānī (d. 1984), Bahā' ad-Dīn Maḥallātī, Mortazā Ḥā'eri Yazdī (d. 1986) and 'Alī Tehrānī<sup>20</sup>, furthermore by Abū l-Qāsim al-Khū'ī<sup>21</sup>, who resided in the Iraqi

18 The consolidation of the Islamic Republic may be dated from the end of the year 1982 when the regime had successfully combatted most opposition groups. See Said Amir ARJOMAND, *The Turban for the Crown. The Islamic Revolution in Iran*, New York/Oxford 1988:154f.

19 An exception is a book which was published by the Iranian Liberation Movement in 1988. It is entitled *Welāyat-e moṭlaqe-ye faqīh* and is said to be written by Bāzargān. It can be regarded as the sharpest criticism of Khomeinī's doctrine before his death. In January 1988, Khomeinī issued a directive in which he proclaimed the absolute mandate of the jurist (i.e. the *faqīh*'s authority to supercede Islamic regulations if he considers that to be indispensable to the benefit of the *umma*), but this directive was not incorporated into the constitution. Maybe, the publication of the book was possible because its contents did not directly contradict the constitution. However, the author often speaks of (the "simple") *welāyat-e faqīh* and not only *welāyat-e moṭlaqe-ye faqīh*. Although religio-juristic objections to the theory are raised in this book, too, the *welāyat-e faqīh* is in many places accused of paving the way for despotism as well as the extermination of freedom, personality and independence. See NAHŽAT-E ĀZĀDĪ-YE ĪRĀN, *Welāyat-e moṭlaqe-ye faqīh*, s.l. 1988:136ff. For Khomeinī's directive see Johannes REISSNER, "Der Imam und die Verfassung. Zur politischen und staatsrechtlichen Bedeutung der Direktive Imam Khomeinis vom 7. Januar 1988", *Orient* 29 (1988):213–236.

20 ARJOMAND, *Turban for the Crown*:155f.

21 Ibid.

city of Nadjaf and was until his death in 1992 the most widely followed *mardja<sup>c</sup> at-taqlīd* throughout the Shiite world. The view of these dignitaries was shared by the Lebanese clerics Muḥammad Ḥusain Faḍlallāh (b. 1935)<sup>22</sup>, Muḥammad Mahdī Shams ad-Dīn (1936–2001)<sup>23</sup> and Muḥammad Djawād Mughniyya (1904–79)<sup>24</sup>. The above-named explained the traditions quoted by Khomeinī in order to justify his theory in a different way and rejected the interpretation that the imams had authorized the *fuqahā<sup>o</sup>* to exercising political power.<sup>25</sup>

The second objection, especially put forward by Iranian clerics, is that the mandate of the *wilāya* refers to the collective religio-juristic authority of all *fuqahā<sup>o</sup>* and cannot be restricted to that of a single jurist or a council of three to five jurists (as alternatively envisioned in article 107 of the Iranian constitution of 1979).<sup>26</sup> Already in the 1960s, there had been a debate about the institution of the *mardja<sup>c</sup> at-taqlīd*, in which Āyatollāh Ṭāleqānī among others had stated that no single *faqīh* could be regarded as the most learned in all aspects of religion.<sup>27</sup> Assuming that solely in the field of religion the recognition of the most learned as such is almost impossible it seems to be preposterous to find a *faqīh* who can be considered in addition as the most learned in the political, economic or any other sphere. Therefore, the mandate of the jurist refers to the community of all *fuqahā<sup>o</sup>*.

However, one should be aware of the fact that all these clerics wanted to reserve for themselves to some extent the right to a say also in political matters. They pronounced themselves in favour of a committee of *fuqahā<sup>o</sup>* which should carry out the task of ensuring the conformity of the laws with

22 Muḥammad Ḥusain FAḌLALLĀH, “‘Alā ṭarīq ḥarakat al-quwwa fī d-daula al-islāmiyya”, *at-Tauḥīd* (March 1986):85–102, here pp. 90ff.

23 Muḥammad Mahdī SHAMS AD-DĪN, *Ahliyyat al-mar’a li-tawallī s-sulṭa*, Beirut 1995:126f.

24 Muḥammad Djawād MUGHNIYYA, *al-Khumainī wa-d-daula al-islāmiyya*, Beirut 1979:70ff.

25 Ibid.; SHAMS AD-DĪN, *Ahliyyat al-mar’a*:125ff.

26 ARJOMAND, *Turban for the Crown*:155f.

27 Seiyed Maḥmūd ṬĀLEQĀNĪ, “Tamarkoz wa ‘adam-e tamarkoz-e mardja<sup>c</sup>iyyat wa fatwā”, *Baḥthī dar bāre-ye mardja<sup>c</sup>iyyat wa rūḥāniyyat*, Tehran 1963:131–135, here p. 132. For the analysis of that discussion see Ann K. S. LAMBTON, “A Reconsideration of the Position of the *Marja<sup>c</sup> al-Taqlid* and the Religious Institution”, *Studia Islamica* 20 (1964):115–135.

Islam.<sup>28</sup> But it was not clear whether this committee would have an absolute right of veto or only a consultative and non-binding capacity.

A third objection to the *welāyat-e faqīh* points to the principle of popular sovereignty enshrined in article 56 of the Iranian constitution<sup>29</sup>, which, according to the critics, contradicted the *welāyat-e faqīh*. Article 56 distinctly states that God has made man the governor of his social destiny. Furthermore, it is derived from this god-given right of popular sovereignty that no one is allowed to make use of it to serve his personal interests or the interests of any particular group. By granting the Islamic leader or leadership council the mandate to rule articles 5 and 107<sup>30</sup>, however, concede the right of sovereignty to the clergy only. Especially Sharīʿatmadārī<sup>31</sup>, Ṭabāṭabāʾī Qomī<sup>32</sup> and Makārem Shīrāzī<sup>33</sup> referred to this contradiction.

As already mentioned above, a certain change of argumentation can be noticed after Khomeinī's death or rather at the beginning of the 1990s. The reason for that is probably to be sought in a cautious liberalization of the Iranian political regime. These critics, reformist clerics and religiously oriented intellectuals, go far beyond the religio-juristic framework. They advocate a democracy based on the model of the West as an alternative type of government and consider it to be in principle compatible with Islamic values. They even deny the clergy's monopoly on interpreting the Islamic sources, by which they also deprive the clerics of their claims to leadership. This line

28 MENASHRI, "Shi'ite Leadership":126; Ervand ABRAHAMIAN, *Radical Islam. The Iranian Mojahedin*, London 1989:82f.; SCHIRAZI, *Constitution*:47f.; Shahrough AKHAVI, "Islam, Politics and Society in the Thought of Ayatullah Khomeini, Ayatullah Taliqani and Ali Shariati", *Middle Eastern Studies* 24 (1988):404–431, here pp. 426f.; MUGHNIYYA, *al-Khumainī*:62ff.; Muḥammad Ḥusain FAḌLALLĀH, *Ma'ā l-ḥikma bi-khaṭṭ al-islām*, Beirut 1985:156.

29 Article 56: "The absolute ruler of the world and humanity is God and He alone has determined the social destiny of human beings. No one shall take away this God-given right from another person or make use of it to serve his personal or group interests. The nation will use this God-given right to act according to the manner determined by the following principles." (translation after "Constitution of the Islamic Republic of Iran", *The Middle East Journal* 34 (1980):181–204, here p. 194).

30 Article 111 of the amended constitution (passed in July 1989) provides that a leadership council can only function in cases of emergency pending the speedy election of a new *rahbar*.

31 MENASHRI, "Shi'ite Leadership":135.

32 ARJOMAND, *Turban for the Crown*:156.

33 BAKHASH, *Reign of the Ayatollahs*:84f.



of argumentation is chiefly pursued by two reformist clerics, who have by now also become known in the West, namely Moḥammad Modjtahed Shabestārī (b. 1936) and Ḥasan Yūsefī Eshkewārī (b. 1949). In April 2000, Yūsefī Eshkewārī took part in a conference about Iran organized by the German Heinrich-Böll-Foundation in Berlin where he gave a lecture entitled *Dictatorship and its history*. After returning to Iran he was arrested and accused of several charges. The philosopher and publicist °Abd al-Karīm Sorūsh (b. 1945), who is increasingly noted internationally, argues in the same way as these clerics.

A basic demand of these critics is that religious knowledge has to be put in a form corresponding to the exigences of the time. The fundamentals of religion, which are unchangeable, have to be distinguished from religious knowledge, which is subject to constant change. Only the Koran and the Sunna constitute the principles of religion. Human understanding of the sacred texts, however, is relative and merely achieved by human efforts so that it can never claim absoluteness.<sup>34</sup> Human beings can become experts in religious science or at least in some of its branches such as *fiqh*, but even the knowledge of these experts (for example the *fuqahā*°) arises from the human mind and is therefore fallible. The knowledge of the clerics obtained by *id-jtihād* makes no exception. For this reason, there is no need for any authority to mediate between God and man, a position which the *mudjtahids* claim for themselves. No one has the right to impose his understanding of the law on others or to forbid others to discuss alternative interpretations of the law. Deriving new interpretations from the Koran and the Sunna should be open to everyone.<sup>35</sup> This opinion, of course, implicitly rejects the *welāyat-e faqīh* as the only legitimate form of government, because the *fuqahā*° are thus stripped of both their monopoly on interpreting the religious sources and their infallibility in giving legal rulings. What logically results from this attitude is the claim that everyone should have the right to run for the highest governmental office and to participate in determining the form of government. It seems therefore reasonable to suppose that those holding this view strive for a democracy (on the Western pattern), but they mostly take care

34 °Abd al-Karīm SORŪSH, *Qabẓ wa baṣṭ-e te'orīk-e sharī'at. Nazariyye-ye takāmol-e ma'refat-e dīnī*, Tehran 1996:51ff.; Ḥasan Yūsefī ESHKEWĀRĪ, *Kherad dar ziyāfat-e dīn*, Tehran 1379 h. sh. (2000):227; Forough JAHANBAKHSH, *Islam, democracy and religious modernism in Iran (1953–2000). From Bāzargān to Soroush*, Leiden/Boston/Köln 2001:149f.

35 Ibid.:230 and 237; SCHIRAZI, *Constitution*:281.

not to use a word like “secularization” although translating their ideas into action would be tantamount to nothing less than a separation of religion from politics. That a secular government is desirable in the eyes of these critics is suggested by one of Sorūsh’s comments, for example. He thinks that man cannot know what God really expects from him. Therefore, governments would do better not to side with any particular religion or interpretation of religion. They should just try to safeguard universal rights, but leave all other affairs to the personal decision-making of the people.<sup>36</sup> According to Yūsefī Eshkewarī, experience shows that democracy is the best and justest form of government. It is the aspect of justice which creates a link between religion and government because the realization of justice is an essential religious value.<sup>37</sup>

A similar argumentation is pursued by Moḥsen Kadīwar (b. 1959) who does speak of a religious system of government, but emphasizes that its leader does not necessarily have to be a *faqīh*. Such a political system, of course, presupposes that the people have a firm religious belief. But if the will of the people and religion came into conflict with each other, the voice of the people should take precedence.<sup>38</sup> In an interview with the newspaper *Khordād* in February 1999, Kadīwar pronounced himself in favour of separating the political institutions from the religious ones. But he did not rule out the possibility that politics could be inspired by religious values.<sup>39</sup> Kadīwar’s criticism has some similarity to that voiced by Montazerī (see below), because he also considers a general supervision (*nezārat*) of politics to

36 ʿAbd al-Karīm SORŪSH, “Eine religiöse demokratische Regierung?”, *Spektrum Iran*, No. 4/1992:79–85, here p. 80. Recently, Sorūsh maintained that “liberalism”, “democracy” and “freedom of thought” are reasonable concepts even if Islamic thought cannot justify them by its own political philosophy or integrate them into an Islamic political theory. See Morad SAGHAFI, “Islamische Intellektuelle und der Demokratisierungsprozeß”, *INAMO*, No. 25 (Spring 2001):21–24, here p. 22. For a collection of some of Sorūsh’s articles and lectures translated into English see Mahmoud SADRI/Ahmad SADRI (ed.), *Reason, Freedom, and Democracy in Islam. Essential Writings of ʿAbdolkarim Soroush*, Oxford 2000.

37 Yusefī ESHKEWARI, *Kherad*:15ff.

38 “Das iranische Volk kann nicht in Ketten ins Paradies geschleppt werden”, *Frankfurter Allgemeine Zeitung*, 21/08/2000:2.

39 Zahrā RŪDĪ (Kadīar) (ed.), *Bahā-ye āzādī. Defāʿiyyāt-e Moḥsen Kadīwar dar dādgāh-e wīzhe-ye rūḥāniyyat*, Tehran 1378 h. sh. (1999):168.

be the task of the clergy without their being directly involved in political matters.<sup>40</sup>

During the last decade, Āyatollāh Ḥosein ʿAlī Montazerī (b. 1922), formerly Khomeinī's successor-designate<sup>41</sup>, also distanced himself from the form of the *welāyat-e faqīh* currently practised in Iran. In comparison to the criticism of the 1990s, his objections seem to be quite moderate, but after he had raised them he was nevertheless put under house arrest.<sup>42</sup> Montazerī does not declare himself in favour of a total abolition of the *welāyat-e faqīh*, but he calls for the introduction of plebiscitary elements like the direct election of the *walī-ye faqīh* by the people and his being accountable to the people and the constitution.<sup>43</sup> The *faqīh* is before the law equal to all other citizens and not above them.<sup>44</sup> Therefore, the religious leader, who is by no means infallible, should open himself to public criticism and is held to account for his actions within the framework of his duties. Recently, Montazerī even demanded that the *faqīh's* period of office should be limited. Furthermore, the power concentrated in the leader's hands should be curtailed so that his main responsibility would be one of mere supervision<sup>45</sup> – similar to

40 Moḥsen KADĪWAR, *Daghdaghehā-ye ḥokūmat-e dīnī*, Tehran 1379 h. sh. (2000):548ff. and 565.

41 For the dispute between Khomeinī and Montazerī and for Montazerī's dismissal as Khomeinī's successor in the office of *rahbar* see Wilfried BUCHTA, *Die iranische Schia und die islamische Einheit 1979–1996*, Hamburg 1997:117f.; for MONTAZERĪ's own account of the events see *Khāterāt-e Āyatollāh Ḥosein ʿalī Montazerī*, Spanga etc. <sup>2</sup>1379 h. sh. (2001):354–370.

42 Navid KERMANI, *Iran. Die Revolution der Kinder*, Munich 2001:200.

43 Āyatollāh MONTAZERĪ, “Nezārat-e faqīh”, *Rāh-e nou*, No. 18, 31 Mordād 1377 h. sh. (22 August 1998):12–13, here p. 12; Wilfried BUCHTA, “Ein Haus mit vielen Herren: divergierende Machtzentren in der Islamischen Republik Iran”, *Orient* 39 (1998):41–84, here p. 81; KERMANI, *Iran*:203f.; Daniel BRUMBERG, *Reinventing Khomeini. The Struggle for Reform in Iran*, Chicago/London 2001:215; David MENASHRI, *Post-Revolutionary Politics in Iran. Religion, Society and Power*, London/Portland 2001:26.

44 According to article 107 of the amended constitution (formerly article 112), the *rahbar* is in the eyes of the law equal to all other citizens of the country.

45 KERMANI, *Iran*:204; *Khāterāt-e Āyatollāh Montazerī*:375 and 416f.; Kadīwar also made this demand in the mentioned interview with *Khordād*. The *rahbar* was bound to the law like all the other citizens. If the *walī-ye faqīh* could act at his own discretion, the country would no longer deserve to be called “Islamic Republic”. See RŪDĪ (Kadīwar), *Bahā-ye āzādī*:159; a similar approach is advocated by Āyatollāh Mūsawī Khūʾīnīhā,

the model envisaged by the Iranian constitution of 1906 (article 2 of the supplement). Today, Montazerī admits that the form of the political system existing since the revolution has caused a number of problems. He is not afraid of revising his views if they prove to be wrong or illusory.<sup>46</sup> Montazerī was joined in his criticism by Āyatollāh Aḥmad Ādharī Qomī (d. 1999) and ʿAbdollāh Nūrī.<sup>47</sup> However, it does not become clear from Montazerī's explanations where he sets a limit to the supervisor's authority – a lack of precision which was criticized by Yūsefī Eshkewarī.<sup>48</sup>

Several questions arise from the criticisms presented above: How can we judge the various lines of argumentation? Why did the argumentation change in the 1990s? Can we determine different motives for the criticism amongst the ranks of the Iranian and non-Iranian clerics? Does criticism of the *welāyat-e faqīh* result in effects which go beyond the political framework?

As opponents of the regime were oppressed soon after the revolution, it seems reasonable that the criticism of most Iranians – particularly as the majority of the Iranian critics were clerics – remained within a relatively narrow theological framework. Of course, those who have received a theological education will refer to their own discipline when giving arguments in favour of their objections. By finding evidence in the Koran and *ḥadīths* and returning to the views of former respected Shiite authorities they can also avert the suspicion of toying with the idea of a secular system. After the experience of the Shāh regime, many critics of the revolutionary period might indeed have welcomed a clerical supervisory council which would watch over the conformity of laws with Islamic values without being directly involved in politics. Some clerics such as Sharīʿatmadārī or Ṭāleqānī had fought side by side with Khomeinī against the Shāh and probably did not want to be regarded as Khomeinī's opponents. Conceivable reasons for a relatively cautious criticism could also be sought in close ties between the families of scholars or between teachers and their students. Apart from that, it might be worth investigating possible contacts of these clerics with laymen or non-religious groups. Āyatollāh Ṭāleqānī, for example, who openly showed his

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managing editor of the reformist newspaper *Salām*, which was closed down in 1999. See BRUMBERG, *Reinventing*:216.

46 KERMANI, *Iran*:203.

47 MENASHRI, *Post-Revolutionary Politics*:22ff; ʿAbdollāh NŪRĪ, *Shoukarān-e eṣlāḥ*, Tehran 1379 h. sh. (2000):316f.

48 Moḥammad QŪČĀNĪ, *Doulat-e dīnī, dīn-e doulatī*, Tehran 1379 h. sh. (2000):37 and 77.

disapproval of the new form of government had spent many years in prison under the rule of the Shāh and had come into contact with people of different political and religious background there.<sup>49</sup>

The criticism of the Lebanese clerics must be seen in a different light. As they did not have to be prepared for immediate threats or censorship, they could interfere in the debate about the *welāyat-e faqīh* in the form of books or articles. Mughniyya joined in the discussion in 1979 by his book *al-Khumainī wa-d-daula al-islāmiyya*. He, too, mainly gave religio-juristic reasons for his rejection of the clergy's direct engagement in political affairs, but it seems probable that the multi-confessional composition of the Lebanese society also played an important role in forming his point of view. Given the special conditions in Lebanon it was advisable to provide the Shia with features which were acceptable for other religious communities, too. The political offices in Lebanon still being distributed according to confessional criteria<sup>50</sup> it was useless for the Shiites to think of creating an Islamic theocratic state. Thus, Faḍlallāh and Shams ad-Dīn talked of legitimate fears of the Christians and called for a dialogue with them.<sup>51</sup> Both pointed to further difficulties which had been posed by the *welāyat-e faqīh* and had apparently not been taken into consideration by Khomeinī. How should the diversity of the Islamic states be dealt with? Was it necessary to establish a single and universal Islamic state under the leadership of a single jurist or should each Islamic state be ruled by a respective supreme *faqīh*? Or should several

49 Yann RICHARD, *Der verborgene Imam. Die Geschichte des Schiismus in Iran*, Berlin 1983:108.

50 Since the early 1980s, the Shiites have certainly comprised the largest confessional group in Lebanon. Thus, their demographic size does not correspond any longer to the underlying logic of the political system according to which the presidency is the domain of the largest confessional group, the office of prime minister is the privilege of the second-largest group and the office of speaker of parliament is reserved for the third-largest group. The last official census in Lebanon, which was conducted in 1932, counted the Shiites as the third-largest confessional group so that they were allocated the position of speaker of parliament. As the distribution of political offices was sustained in spite of demographic alterations, the Shiites are still perceived as a minority. By this principle of confessional distribution of political offices religion continues to be a decisive factor in Lebanese politics and society. See Augustus Richard NORTON, "Lebanon", *The Oxford Encyclopedia of the Modern Islamic World*, vol. 2:472–476; Axel HAVEMANN, "Libanon", *Der Islam in der Gegenwart*, ed. by Werner Ende/Udo Steinbach, Munich 1996:520–531, here p. 521.

51 Chibli MALLAT, *Shi'i Thought from the South of Lebanon*, Oxford 1988:41.



states unite under the leadership of a single jurist being at the head of a supreme assembly?<sup>52</sup> However, both Faḍlallāh and Shams ad-Dīn had participated in a meeting of Sunnite and Shiite clerics in Tehran in early 1986 in the course of which a draft of an Islamic constitution for Lebanon was elaborated. In the aftermath of the conference, they apparently changed their mind about the realization of an Islamic republic in Lebanon.<sup>53</sup>

Apart from Montazerī's criticism – whose change of point of view might to a certain degree be due to his disappointment at his removal by Khomeinī –, the argumentation of the Iranian critics became more and more interesting in the recent past. The view that *idjtihād* should not only be a privilege of the clergy is by no means a new one. Already ʿAlī Sharīʿatī (1933–77) and Mehdī Bāzargān had supported this opinion.<sup>54</sup> But what is remarkable now is that even clerics endorse this view. So far we can only speculate about the reasons for the clergy's attitude. Was it the people's large discontent about theocratic rule which led clerics to make such statements in order to save the clergy from a total loss of face? Certainly Khomeinī's death, his succession by Khāmeneʿī – who had not been acknowledged as an Āyatollāh before<sup>55</sup> – and the constitutional amendments of 1989 which

52 FAḌLALLĀH, *ʿAlā ʿarīq*:91ff.; Muḥammad Maḥdī SHAMS AD-DĪN, *Niẓām al-ḥukm wa-l-idāra fī l-islām*, Beirut 1995:416f. Shams ad-Dīn then proceeds with concluding from the *maqḥūla* of ʿUmar b. Ḥaṣṣala that the *welāyat-e faqīh* applies only to that country whose people voted for this form of government. See *ibid.*:418f.

53 Stephan ROSINY, *Islamismus bei den Schiiten im Libanon. Religion im Übergang von Tradition zur Moderne*, Berlin 1996:144ff. and 220ff.

54 For Sharīʿatī's conception see inter alia Shahrough AKHAVI, "Shariati's Social Thought", *Religion and Politics in Iran. Shi'ism from Quietism to Revolution*, ed. by Nikki R. Keddie, New Haven/London 1983:125–144, here p. 140; Hamid DABASHI, *Theology of Discontent. The Ideological Foundations of the Islamic Revolution in Iran*, New York/London 1993:102–146; for Sorūsh's reception of Sharīʿatī see Katajun AMIRPUR, "Ein iranischer Luther? – ʿAbdolkarīm Sorūsh's Kritik an der schiitischen Geistlichkeit", *Orient* 37 (1996):465–481, here pp. 467–469 and 473–475. Bāzargān has always rejected the clergy's claim for an exclusive monopoly on interpreting the Islamic sources. See Wilfried BUCHTA, "Mehdi Bazargan", *Orient* 36 (1995):585–590, here pp. 585f.; for Bāzargān's religious and sociopolitical theories see CHEHABI, *Iranian Politics*:42–100; DABASHI, *Theology of Discontent*:324–366.

55 Although there had been speculations that a leadership council would be appointed after Khomeinī's death, the assembly of leadership experts elected within one day Ḥodjdjatoleslām Khāmeneʿī as successor, who has been called Āyatollāh from now on. See Silvia TELLENBACH, "Zur Änderung der Verfassung der Islamischen Republik Iran vom 28. Juli 1989", *Orient* 31 (1990):45–66, here pp. 49f.; for the attempts to retain

eliminated the *mardja*<sup>‘iyya</sup> from the requirements for the *walī-ye faqīh* and emphasized his political perspicacity showed the untenability of the *welāyat-e faqīh*. Besides, the early 1990s witnessed a slight liberalization which granted critics of the regime a somewhat wider scope to air their grievances. Provided that exercising *idjtihād* is no longer restricted to high-ranking clerics – as critics like Shabestarī or Yūsefī Eshkewarī demanded – all political offices have to be open to non-clerics, too. But the denial of the clergy’s monopoly on *idjtihād* would have consequences beyond the political framework such as resolving the division of the Shiite community (at least of the *uṣūlī*-school) into *mudjtahids* and *muqallids* which has evolved over the centuries. Of course, the above-mentioned clerics are not unaware of this problem. Yūsefī Eshkewfī admits that the concepts of *idjtihād* and *taqlīd* will change and that there will no longer be any necessity for *idjtihād* in the conventional sense. *Taqlīd* will only be required within the realm of specific religio-legal matters such as religious observances (*‘ibādāt*).<sup>56</sup> So the criticism of these clergymen may be interpreted as a – conscious or unconscious – call for secularization. That such a call arises from the ranks of the clergy is without doubt unusual. Therefore, we may wonder what will result from it in the future.

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the indivisibility of religious and political authority after Khomeinī’s death see Saskia GIELING, “The *Marja*<sup>‘iyya</sup> in Iran and the Nomination of Khamanei in December 1994”, *Middle Eastern Studies* 33 (1997):777–787; Wilfried BUCHTA, “Die Islamische Republik Iran und die religiös-politische Kontroverse um die *marja*<sup>‘īyat</sup>”, *Orient* 36 (1995):449–474, especially pp. 453–458; Rainer HERMANN, “Von der Wirtschafts- zur Legitimationskrise. Die Ära Khamenei/Rafsanjani in der Islamischen Republik Iran”, *Orient* 35 (1994):541–564, especially pp. 558–563.

56 Yūsefī ESHKEWARI, *Kherad*:237.