Journal of South Asian and Middle Eastern Studies Vol. 43, No. 4, Summer 2020

From Partial to Complete: Juristic Authority in Twelver Shi'ism

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A salient feature of Twelver Shi'ism is the claim by jurists to wield authority during the occultation of the Imam. This article will examine the foundations and evolution of this genre of authority and will argue that there was much disputation among the Shi'i scholars as to the nature and scope of the '*ulama*'s' authority. It will further demonstrate that the authority of the scholars was asserted and enhanced in response to the changing socio-economic and political milieu of the times. State patronage and the appropriation of several titles precipitated multivariate forms of juristic authority.

After the occultation of the twelfth Imam in 940 C.E., the socio-political environment of the Shi'i community in Baghdad ameliorated considerably when the Buyids came to power in 945 C.E.. The favorable political conditions enabled the Shi'i jurists to speculate on the possible genre and extent of authority that they could wield. As, will be demonstrated jurists living in the Safavid (1501-1736) and Qajar (1794-1925) eras were able to assert and expand the scope of their authority to a much greater degree than the Buyid scholars had envisaged. This was, in many cases, in response to the socio-political vicissitudes that later jurists encountered.

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The Epistemic Authority of the '*Ulama*'

The authority of Shi'i jurists is predicated on different bases. These range from delegation by the Imams to the titles they claimed for themselves. One of the most important mode of the '*ulama*'s authority is epistemic. This genre of authority is based on the erudition and proficiency of a scholar in a particular domain.[1] As it is restricted to experts in a particular field, epistemic authority endows its bearers with extra status and honor. For the Shi'i '*ulama*' their epistemic authority was anchored in their erudition and hermeneutical skills. Their ability to extrapolate, interpret, and decipher the law empowered them to exercise and assert authority in the community.

Although the Buyid scholars exercised considerable influence over the Shi'i populace, the epistemic authority of the Shi'i '*ulama*' increased considerably when *ijtihad* as a methodological device to derive legal precepts was accepted by the scholars of Hilla in the thirteenth and fourteenth centuries. Especially after Ibn al-Mutahhar ('Allama) al-Hilli (d. 1325) established and articulated the principles of *ijtihad* jurists were able to extrapolate laws by deploying various hermeneutical principles enshrined in Islamic legal theory (*usul al-fiqh*). The authority of the scholars came to be based not only based on their erudition and transmission of traditions but also on their application of *ijtihad* in resolving issues that were not mentioned in revelatory texts.[2]

The ability to exercise *ijtihad* was crucial as it empowered scholars to issue rulings based on rational as opposed to merely textual grounds. Thus the epistemic authority of the *fuqaha'* (jurists) was exacerbated by their interpretive and hermeneutical enterprises. Their authority was predicated not only on transmitting traditions but also on interpreting and applying them in light of prevalent contingencies.[3] The jurists' *ijtihad* and legal judgements conferred authority on them because their conclusions were decisive in shaping current practices and establishing precedents for later generations of scholars. Gradually, their inferences became a part of normative jurisprudence. This can be discerned from the fact that when the sacred sources were silent on an issue, a jurist would often vindicate his injunction by appealing to the *ijma'* (consensus) of the past and present scholars. Stated differently, the hermeneutics and legal deductions of a jurist were often incorporated in the normative literature and could be decisive in helping later scholars in their formulation of the law.

The focus on the hermeneutics demonstrates the extension of authority

[1]Michael Berger, *Rabbinic Authority* (New York: Oxford University Press, 1998), 73–74.

[2]Liyakat Takim, *The Heirs of the Prophet: Charisma and Religious Authority in Shi'ite Islam* (Albany: State University of New York, 2006), chapter three.

[3]Ibid., 108

beyond texts. Apart from the transmission of sacred literature, canonization is also connected to the interpretation of sacred texts. The mediating figure here is the exegete, and it is in his exegesis that his authority lies. In the process of textualizing and elucidating earlier precedents, based on the principle of *ijma*' of the scholars, the jurists deduced injunctions that became part of normative jurisprudence. The authority that was initially restricted to the Qur'an and the *sunna* was extended to include the legal edicts of the jurists. It is therefore correct to state that the authority derived from transmitting traditions was supplemented by epistemic authority, which was premised on the '*ulama*'*s* interpretive exercises.

Authority as Heirs of the Prophet

Another mode of accentuating the authority of the '*ulama*' was by applying titles that linked them to the Prophet and Imams. The '*ulama*' laid claim to the Prophet's legacy, based on the famous Prophetic tradition: "*Al-'ulama' waratha al-anbiya*" (the scholars are the heirs to the Prophets).[4] What differentiated the scholars from the laity was their capability to interpret, define, and articulate the law. More than any other, it was this factor that precipitated the '*ulama*'s claim to epistemic authority. By continually citing the *waratha* tradition, the prestige and authority of the scholars was firmly entrenched in the minds of the masses.

The title "heirs of the Prophet" had major ramifications. Since they were purportedly the inheritors of Prophetic knowledge, the Shi'i '*ulama*' also laid claims to the Prophetic legacy. Najm al-Din Ja'far also called Muhaqqiq al-Hilli (d. 1277)), for example, maintained that the scholars were the exclusive inheritors of the Prophetic legacy. The sixteenth-century jurist Husayn b. al-Hasan al-Karaki (d. 1592-93) also asserted that he was an heir to the Prophets.[5] In recent times, Ayatullah Ruhullah Khumayni (d. 1989) maintained that it is the scholars, not the Imams, who are the true heirs of the Prophet. He states,

> Some people are of the opinion that probably the Imams are intended (by the "heirs tradition"). But it would appear that, on the contrary, the scholars of the community – the 'ulama'- are intended. The tradition itself indicates this, for the virtues and qualities of the Imams that have been mentioned elsewhere are quite different from what this tradition contains. The statement that the Prophets have bequeathed traditions and whoever learns those traditions acquires a generous portion of their legacy cannot serve

[4]See also *Patricia Crone and Martin Hinds, God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986), 198.

[5]See Devin Stewart, Islamic Legal Orthodoxy: *Twelver Shi'ite Responses to the Sunni Legal System* (Salt Lake City: University of Utah Press, 1998), 216.

as a definition of the Imams. It must therefore refer to the scholars of the community.[6]

Apart from claiming to be the inheritors of Prophetic knowledge, the status and authority of the '*ulama*' was augmented by public adulation and proclamation of their virtues. Especially under the Safavid dynasty, the '*ulama*' were portrayed as the ark of salvation and doors to heaven. Disparaging them would result in God's punishment. Some '*ulama*' were even supposed to have been endowed with powers to perform extraordinary feats (*karamat*)[7] whereas others claimed to be mediators with the Imams and Prophet. Muhammad al-Baqir al-Majlisi (d. 1699) said that "the '*ulama*' were the doors to paradise; to insult them would cause the wrath of God to descend. It was through them that the Imams could be accessed."[8]

Authority based on State Patronage

Especially after the establishment of a Shi'i state in Iran in 1501, the authority of the jurists was accentuated in different realms. Shi'i '*ulama*' were imported from Lebanon and Bahrain to assist in the process of converting the masses in Iran to Shi'ism. Since they were incorporated in the state apparatus, the scholars had to engage with the nascent Shi'i state. One of these realms was the political. Due to state patronage of the '*ulama*' the Safavid kings of the time were depicted as being subservient to the scholars. The kings were to consult with them because they transmitted, interpreted, and implemented God's law. Because the community was grounded on Islamic law and the jurists were its exponents and custodians, it was necessary that the rulers consult and listen to them on matters that pertained to the *shari'a*.

Muhammad al-Baqir Majlisi claimed the superiority of the religious over the political authority, i.e., the jurist could delineate the range and parameters of the ruler's powers. Stated differently, the state was subordinate to the law and had to abide by the rules of the *shari'a*.[9] Many examples can be cited of the subordination of the kingly to the juristic authority**.** Shah Abbas the

[6]See his argument as cited in *Islam and Revolution: Writings and Declarations of Imam Khomeini*, trans. Hamid Algar (Berkeley: Mizan Press, 1981), 100.

[7]Sa'id Amir Arjomand, *The Shadow of God and the Hidden Imam: Religion, Political Order and Societal Change in Shi'ite Iran from the Beginning to 1890* (Chicago: Chicago University Press, 1986), 138.

[8]Colin Turner, *Islam Without Allah? The Rise of Religious Externalism in Safavid Iran* (Richmond: Curzon Press, 2002), 178-79.

[9]Amirhassan Boozari, *Shi'i Jurisprudence and Constitution: Revolution in Iran* (New York: Palgrave Macmillan, 2011), 43.

first walked and rode behind an '*alim* Mulla Abdullah Tuni.[10] This was his way of admitting that the religious authority overlapped and even trumped his own authority.

The '*ulama*' who were involved in the political arena had to perform various duties. The afore-mentioned Majlisi, who was closely affiliated to kings, was appointed *shaykh al-Islam* in 1687, the highest religious authority appointed by the Shah.[11] Majlisi held this post for twelve years. One of his duties was to preside over the coronation of the king. Majlisi presided over the coronation of Shah Sultan-Husayn (d.1722). Similarly, Mir Damad conducted the coronation of Shah Safi in 1629 and prayed for the longevity of the King.[12] Under Safavid rule, the office of *Mulla Bashi* was created. Under this institution, the scholar was the head and most excellent of all the scholars of the time. The king would consult him on any religiously related issues. In public gatherings he would sit above other scholars and would be closely seated to the king. He would even accompany the king in his journeys. This represented greater ceremonial and administrative functions. The office survived until the Qajar era.

The '*ulama*'s involvement in the political realm continued even under the Qajar period. Shaykh Ja'far Kashif al-Ghita (d. 1812-3) as *al-na'ib al-'amm* (general deputy of the Imam) authorized the king Fath 'Ali Shah to wage war against Russian hegemony and incursion into Iranian lands.[13] The same king also claimed to rule on behalf of the *mujtahids*.[14] The '*ulama*' also attained popular support by performing acts that impacted the laity directly. These included performance of acts like *istikhara* (bibliomancy) and charm writing.[15]

General Deputyship of the Imam (*al-Na'ib al-'Amm al-Imam*)

The impact of the authority of the '*ulama*' was felt most directly in their religious services to the community. In an important tradition called the *maqbula* of Ibn Hanzala (to be discussed below) Ja'far al-Sadiq (d. 765), the sixth Imam, had reportedly designated judges to be his deputies to the community. Being a deputy of an Imam obviously greatly augmented the status and prestige of the '*ulama*' for they were not longer just scholars but also appointed agents of the Imam. The question of whether this appellation

[10]Muhammad Tunkabuni, *Qisas al- 'Ulama'* (Tehran: 'Ilmiyya Islamiyya, n.d.), 270.
[11]Sa'id Amir Arjomand, *The Shadow of God*, 154-5.
[12]Ibid., 178.
[13]Ibid., 224.
[14]Rida Quli Khan Hidayat, *Rawdat al-Safa-ye Nasiri*, 10 vols, (Tehran: n.p., 1960), 9/379.
[15]Ibid., 156.

could be applied to jurists during the *ghayba* period was discussed and resolved much later on. When the Buyid and Hilla scholars discussed juristic mandate over important jurisprudential issues such as *jihad*, *khums*, *zakat* or offering the Friday (*jum'a*) prayers they did not claim to represent or deputize on behalf of the Imam. As a matter of fact, the term *niyaba* (deputyship of the Imam) does not appear in their writings. The term *al-na'ib al–'amm* was first used by Shams al-Din Muhammad ibn Makki al-'Amili (d. 1384), known as al-Shahid I (the First Martyr) (d. 1384) and later by Zayn al-Din al-'Amili (also called Shahid II - d. 1558).[16] However, both Shahid I and II may have seen their positions as collective agents rather than specific ones in the sense that the '*ulama*' had priority of undertaking such functions. If the scholars were not available, then any just and upright believer could perform them if they were capable of doing so.[17] Thus, at least for them, the title was not reserved exclusively for the '*ulama*'. The application of the title *al-na'ib al–'amm* for scholars exclusively was a later development in Shi'i juridical history.

In all probability, it was 'Ali b. al-Husayn al-Karaki (d. 1533- 34) who articulated and first applied the distinction between *al-na'ib al-khass* and *al-'amm* to refer to the exclusive deputyship of the scholars. He invoked the *maqbula* as a basis for distinguishing between the two forms of *niyaba*.[18] In doing so, he firmly established the idea of the general deputyship of the Imam. This was a juristic innovation and inevitably accentuated the stature and authority of the '*ulama*'. For al-Karaki, al-Sadiq's statement in the *maqbula* "I have made him a judge over you" meant that jurists were invested with the task of undertaking various functions in the community. It has to be remembered that al-Karaki was closely affiliated to Shah Tahmasp in the Safavid court. Of all the scholars, he enjoyed unrivalled eminence as Tahmasp granted him extensive powers over state functions including tax immunities and remuneration, acts that solicited severe criticism from another jurist of the time, Ibrahim al-Qatifi (d. 1543). Although al-Karaki had previously designated himself as the deputy of the Imam[19] the title was officially bestowed upon him in 1533 by Shah Tahmasp.[20] He was also

[16]Devin Stewart, *Islamic Legal Orthodoxy*, 214-5.

[17]Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam: From the Office of Mufti to the Institution of Marja'* (Kuala Lumpur: ISTAC, 1996), 151-2.

[18]'Ali b. al-Husayn al-Karaki, *Jami' al-Maqasid fi Sharh al-Qawa'id*, 15 vols. (Qumm: Al al-Bayt, 1988), 130-1.

[19]al-Karaki used this term in responding to the criticism that he faced from al-Qatifi in 1510. See Andrew Newman, *Twelver Shi'ism: Unity and Diversity in the Life of Islam*, 632 to 1722 (Edinburgh: Edinburgh Univ. Press, 2013), 162.

[20]Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite* Islam, 86.

bestowed with other titles like the *mujtahid* of the time, seal of the *mujtahids*, guardian of the heritage of the seal of the Prophets,[21] *hakim* of Iran[22] and the *shaykh* of Islam, cementing, in the process, his considerable authority in Safavid Iran.[23] He was also granted power over state functionaries and land grants.[24]

By claiming to be the general deputy of the Imam, al-Karaki was able to consolidate and extend juristic authority as the *fuqaha'* were now claiming to be authorized deputies of the Imam. Since the textual sources did not explicitly proclaim the '*ulama*' to be the Imam's agents during his absence, the claim to be the general deputy of the Imams was inferred hermeneutically. The '*ulama*' consolidated their authority in different ways. Investiture from the Imams cemented their juridical authority. Their epistemic authority was premised on their expertise and scholarly activities. At the popular level, titles such as representative of the Imam, seal of the *mujtahid*s and *mulla bashi* had the effect of greatly increasing both their authority and stature.

The increased number of *mujtahid*s after the triumph of the *Usulis* in the eighteenth-nineteenth centuries saw a proliferation of religious titles conferred to differentiate and distinguish between them. Initially, the title *hujjatullah* was applied exclusively to the Imams. In the Qajar period, Mirza Qummi used it to refer to *mujtahid*s.[25] The first time that the epithet *hujjat al-Islam wa'l-Muslimin* was used in Shi'ism was for Muhammad al-Baqir al-Shafti (d. 1844) in Isfahan. After Mirza Hasan Shirazi, the title *hujjatul-Islam* was applied to the most prominent *mujtahid*s in the Atabat (shrine cities).[26] By the end of the nineteenth century, all the major *mujtahid*s in the Atabat had adopted this title. With time, this title became so common that what signified at one time, the highest-ranking religious authority, was applied to lower rank *mujtahids* too. In contemporary times, a scholar who has not attained *ijtihad* is frequently addressed as *hujjatul-Islam*. It should be noted that most religious titles were not conferred by a higher religious authority. In the absence of a church or ecclesiastic authority in Islam, a title was either claimed by a scholar or conferred to him by his followers or peers.

[21]Sa'id Amir Arjomand, *The Shadow of God*, 133-4.

[22]Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 86-7.

[23]The Shaykh al-Islam acted as a judge in the administration of justice and often lead congregational prayers and was the source of reference for religious questions. Subsequently, other scholars like Shaykh Baha'i (d. 1631) were also bestowed called *shaykh al-Islam*.

[24]Sa'id Amir Arjomand, "The Mujtahid of the age and Mulla Bashi: An Intermediate Stage in the Institutionalization of Religious Authority in Iran," in Sa'id Amir Arjomand ed. *Authority and Political Culture in Shi'ism*, (Albany, SUNY, 1988), 81-2.

[25]Muhammad Tunkabuni, *Qisas al- 'Ulama'*, 161.

[26]Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 212.

Especially since the nineteenth century, religious titles have proliferated, indicating the hierarchical stratification of the '*ulama*', their scholarship and the followership that a *mujtahid* could command.

After the institutionalization of *marja al-taqlid* (imitation of the most learned jurist) and the concomitant juristic hierarchy it created, new titles were conjured and applied. Muhammad al-Hasan al-Najafi (d. 1849) was called *shaykh al-fuqaha*' and Murtada al-Ansari was and is still addressed as *al-Shaykh al-A'zam*.[27] The title Ayatullah was first used for 'Allama al-Hilli by his commentators and then later on for Majlisi.[28] In the nineteenth century, Mirza Husayn Nuri d. 1903) reportedly referred to al-Sayyid Muhammad Mahdi Bahr al-'Ulum (d. 1797) as Ayatullah. After Sayyid Muhammad Kazim Tabataba'i al-Yazdi (d. 1919) declared in his *Urwa wa'l-Wuthqa* that any act without *taqlid* (emulation of a *marji'*) is null and void, the title Ayatullah became more common in the twentieth century as it helped promote the credentials and status of a jurist who had to be followed. With the appearance of many Ayatullahs, there was a concomitant need to distinguish between various contenders of the title. Thus, in the 1960s the term *Ayatullah al-'Uzma* (Grand Ayatullah) was applied to Hossein Burujardi (d. 1961). In post-revolutionary Iran, the term Imam, which in Shi'i theology is used exclusively to refer to the twelve Imams, was applied to Khumayni.

The Judicial Role (*Qada*' - Administering Justice) of the Jurists

In his *Furu' al-Kafi,* the Shi'i traditionist Muhammad. b. Ya'qub al-Kulayni (d. 940-1) begins his chapter on *qada*' by citing *hadith* reports to demonstrate that judicial authority belongs to the Prophet and Imams only. During the occultation of the twelfth Imam, the '*ulama*' had to fill the lacuna created by the absence of the Imam. More specifically, they had to resolve disputes, act as judges, enjoin the good and forbid the evil, look after the property of minors and the disabled (*al-umur al-hisbiyya*), and administer punishments (*hudud*) where necessary. In discussing the judicial authority of the jurist an important *hadith* must be assessed. The tradition, called the *maqbula*[29] has been used extensively by jurists in legitimizing the judicial functions they perform during the absence of the Imam. 'Umar b. al-Hanzala (n.d.), asked Ja'far al-Sadiq, "What should be done, in the case of two of our companions, who are in dispute over a debt or inheritance?" The Imam responded, "He should seek

[27]Ibid., 210-11.

[28]Ibid., 213.

[29]A *maqbula* is a tradition whose text has been approved and accepted by the *hadith* scholars, and whose effects have been put into practice, even though the reliability of its transmitters has not been confirmed by the jurists.

one among you who narrates our traditions and who is well versed in what is permitted and prohibited (*halal* and *haram*). They should be satisfied with him as a *hakim* (judge), for I have appointed him a judge over you. If he judges in accordance with our rulings and [someone] does not accept [them], then he has indeed deemed light God's ordinances and has rejected us."[30]

The statement in the *maqbula*, "I have appointed him a judge over you" is often quoted by jurists as evidence of al-Sadiq's designating them as his deputies in judicial matters. The *hadith* demonstrates that a central authority (the Imam) delegates his authority to a diffuse and unspecified group. Judicial authority is granted to an unspecified number of individuals as long as they have the required prerequisites of a *qadi* i.e., *iman* (faith), '*adala*, (moral probity) and '*ilm* (knowledge) of the traditions of the Imams. The significance of this role for the jurists can be discerned from the fact that Muhammad b. Ja'far Tusi (d. 1067) insists that *qada*' is *wajib kifa'i*, a duty that is incumbent on the entire community. If some members undertake it the rest of the community is absolved from the duty.

Although the tradition from al-Sadiq was in response to a question from one of his disciples, jurists have invoked it to justify their authority as arbiters in the community. For the Shi'is, a *qadi*'s authority was centered not only on his epistemic competence, sound faith, and moral probity, but also from the appointment by the Imam. al-Sadiq also distinguishes profane from religious authority by prohibiting his followers from seeking judgement from non-Shi'i judges. The *maqbula* further states, "Whoever does that has resorted to rulings issued by a tyrannical state."[31] The Imams' investiture of judicial authority to his followers meant that judgments by a *qadi* designated by an 'Abbasid caliph were invalid even if they were correct. Stated differently, an edict was only valid if it came from the correct authority.[32]

Especially during the occultation, the *riwayat al-nasb* – tradition of investiture as it came to be called, became very important in that it gave the jurists the legitimation they needed to exercise judicial and, as we shall see, other forms of authority. This point can be discerned from the fact that scholars have often cited it in vindicating their functions in the community. The full impact of the delegation tradition can also be gauged by the numerous juridical decrees that were issued based on the claim that the *fuqaha'* were the agents of the Imam.

The *maqbula* also reveals that the Shi'is were to search for qualified jurists

[30]Muhammad b. Ya'qub Kulayni, *Al-Kafi fi 'Ilm al-Din*. 4 vols. (Tehran: Daftar Farhang Ahl al-Bayt, n.d.), 1:86-87. See also Liyakat Takim, *The Heirs of the Prophet*, 137-8.

[31]Kulayni, *al-Kafi*, 1:86-87.

[32]Liyakat Takim, *Heirs*, 139.

who, apart from the other qualities mentioned above, had to be thoroughly acquainted with the Imams' *ahadith*. Al-Sadiq was further asked by Ibn Hanzala as to whom should the Shi'is refer if two transmitters reported his traditions. He is reported to have said, "Seek the most morally upright (*a'dal*) or most learned (*afqah*) of the two and the most truthful (*asdaq*) in reporting traditions."[33] The recognition of the most trustworthy, upright, or reliable person, was left to the discretion of the community. The authority of the jurists was to be legitimized not only by the Imam's appointment, but also by the community's evaluation of the credentials of the jurists, i.e., correct faith, moral uprightness, and erudition.[34]

By insisting that the Shi'is had to consult one of their own judges, the community was asserting its judicial autonomy from the rest of the community. For it was only Shi'i jurists that were legitimate. The *maqbula* drew a distinction between profane power and sacred authority. The community may be forced to accept the power of the sultans and kings, but not their authority. It was this factor that made *qadis* appointed by the *de facto* government illegitimate. This is because they lacked the prerequisites of a *qadi* specified in the *maqbula*.

There was little disagreement among the scholars that a qualified *faqih* has the right of *qada*' (authority to administer justice). It was from the time of al-Mufid (d. 1022) onwards that the concept of the '*ulama*'s role during the *ghayba* period was discussed in the juridical tracts. al-Mufid asserted the rights of Shi'i scholars to the office of *qadi* because the Imams have granted them the authority to do so."[35] Muhaqqiq expands the range of activities that a *qadi* can undertake. Apart from judging between litigants, he can also enforce penalties (*iqama al-hudud*) and engage in a wider ambit of functions as long as he is able to do so.[36] In justifying this role, he cites the *maqbula*. Subsequently, judicial authority was also asserted by both Shahid I and II.[37] As we shall see, with time, the delegation tradition was invoked by the scholar**s** to extend their authority beyond the realm of *qada*'. Since the extension of authority could not be derived from the traditions directly, it was done exegetically. By deploying various hermeneutical stratagems, Shi'i '*ulama*' were able to perform tasks that earlier scholars had not envisioned**.**

[33]Ibid. Kulayni, *al-Kafi*, 87.

[34]Liyakat Takim, *Heirs*, 138.

[35]Muhammad b. al-Nu'man al-Mufid, *al-Muqnia fi'l Usul Wa'l-Furu'* (Qumm: Mu'assasat al-Nashr al-Islami, 1990), 811.

[36]Ja'far b. Hasan Najm al-Din (Muhaqqiq) al-Hilli, *Sharay'i al-Islam fi Masa'il al-Halal wa'l-Haram* 3 vols. (Tehran: 'Ilmiyya Islamiyya, 1969), 1/344-5.

[37]Norman Calder, "The Structure of Authority in Imami Shi'i Jurisprudence," unpublished thesis (School of Oriental and African Studies, 1979), 82-3.

Gradually, some scholars claimed a virtual monopoly of religious authority.

Juristic Mandate on Convening *Jum'a* Prayers

Throughout the post-*ghayba* period, jurists disagreed among themselves regarding the ramifications of the *maqbula* and the extent of the authority it implied. More specifically, scholars disagreed whether the appointment by al-Sadiq was applicable to them during the absence of the twelfth Imam or not. If it did, how much authority could a jurist wield? In what fields? Questions such as these were posed especially on the perplexing issue of convening the Friday prayers during the *ghayba.* This was because many jurists believed that the *jum'a* prayers could only be convened by the Imam or one who was appointed by him. That the issue of Friday prayers was extremely important and controversial can be seen from the fact that during the Safavid era ninety essays were written on the subject. Of these eighty appeared in the seventeenth century.[38]

The issue of Friday prayers was more sensitive than most because it had major political and social implications. Traditionally, it was the Caliph or his governors who would convene and lead the prayers. For the Shi'is, the *jum'a* prayer was a manifestation of the Imam's temporal and religious authority. During the *ghayba,* it became a public expression of the extension of the authority of the jurist. Significantly, no jurist in the Buyid era claimed that it is mandatory (*wajib*) to hold the prayers. al-Sharif al-Murtada and Sallar al-Daylami (d. 1056 or 1071), who was a student of Tusi, stated unequivocally that a *faqih* may not lead the Friday prayers, although, according to al-Sallar, he may lead the *eid* prayers.[39] In his *al-Khilaf,* Tusi had prohibited convening of the *jum'a* prayers.[40] That ruling was revised in the *Nihaya* where Tusi stated that only the Imam or one who was appointed by him could lead the Friday prayers.[41] Later on, in the same work, Tusi allows (but does not obligate) the holding of *jum'a* prayers.[42] In the final analysis he indicates that the Friday prayers are not personally or individually mandatory however they can be offered as optionally mandatory meaning one can choose between the two obligatory duties.[43] During the Buyid era, scholars disagreed as to whether they could lead Friday prayers or not or if it was permissible to hold the

[38]Andrew Newman, *Twelver Shi'ism,* 185.

[39]Norman Calder "The Structure of Authority," 160; Abdulaziz Sachedina, *The Just Ruler in Shi'ite Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence* (New York: Oxford University Press, 1988), 193.

[40]Ibid., 161.

[41]Muhammad b. Ja'far Tusi, *al-Nihaya fi Mujarrad al-Fiqh wa'l-Fatawa* (Tehran, n.p., 1970), 103.

[42]Ibid., 302.

[43]Ibid.

prayers during the occultation. Those who allowed the *jum'a* did so as a *rukhsa* (a special dispensation), not as an obligation and maintained that a believer has a choice to offer either the Friday regular midday prayer.

Ibn Idris (d. 1201) also prohibits holding the *jum'a* prayers.[44] In explaining this ruling, he argues that whereas there is proof to indicate that the midday prayers are obligatory there is no such proof to establish the incumbency of holding Friday prayers. This is especially so because reports regarding Friday prayers are singular (*al-khabar al-wahid*) which, in his view, are not of probative value (*hujja*). Therefore, he rules that it is forbidden to hold Friday prayers.[45] Stated differently, unlike the midday prayers, permission to hold the Friday prayers has not been granted based on certainty (*qat'*). Ibn Idris also applied the principle of *bar'a al-dhimma* (the absolution of duties in the absence of a specific injunction) to rule against the *jum'a*.[46] Those jurists who had ruled that the Friday prayers were prohibited maintained, in effect, that the authority of the jurists could not be extended to other fields. As we shall see, by deploying various forms of hermeneutical tools, what was *haram* for Ibn Idris became *wajib* for later scholars.

In the *Tahrir* 'Allama al-Hilli agrees with al-Sallar and Ibn Idris in prohibiting the *jum'a* prayers.[47] He revises this ruling in the *Mukhtalaf* where he allows the Friday prayers because the verse pertaining to it in the Qur'an (62.9) is unconditional. Due to this and based on the principle of *ibaha* (permission to perform an act in the absence of a specific prohibition) he rules that it is allowed to convene the prayers. In addition, he argues, the trustworthy jurist has been designated by the Imam to undertake his duties. After all, jurists perform other functions on behalf of the Imam like enjoining the good, undertaking justice and enacting the legal punishments. If he can undertake those functions, why can't he lead the Friday prayers?[48]

The debate surrounding the Friday prayers continued for centuries later. Shahid I states that the Imam had permitted holding the Friday prayers based on a *sahih* tradition transmitted from Zurara b. 'Ay'an (d. 767) in which the Imam asked him to participate in the Friday prayers. Shahid I also claimed that the scholars had engaged in more important matters than Friday prayers such as judicial functions and issuing legal injunctions. If they

[44]Muhammad b. Mansur Ahmad Ibn Idris, *Kitab al-Sara'ir* (Qum: Mu'assassa Nashr al-Islami, 1989), 1/161.

[45]Ibid.

[46]Ibid.

[47]Norman Calder, "The Structure of Authority," 162.

[48]Hasan b. Yusuf Allamah Al-Hilli, *Mukhtalaf al-Shi'a fi Ahkam al-Shari'a*, (Litho, 1905), 1/108-9.

could perform such functions, why could they not lead Friday prayers?[49] Shahid I employs both rational and textual proofs to advance his arguments regarding the Friday prayers. This was an important strategy in legitimizing the extension of the authority of the jurist.

Writing in the sixteenth century al-Karaki stated categorically that Friday prayers should be convened based on the Qur'anic verse 62:9 and traditions from al-Sadiq urging his followers to participate in Friday prayers. He argued that what was mandatory during the presence of the Imam is also mandatory during his absence.[50] al-Karaki qualified this claim by stating that Friday prayer is optionally incumbent *al-wajib al-takhyiri*[51] i.e., a believer has an option to offer either the Friday or the regular midday prayer. Al-Karaki further stated that the function of a jurist is not limited to that of being a judge and enforcing legal punishments. This is because the jurist has been appointed as a *hakim* by the Imam, something that has been documented in the *maqbula*. He further argues that permission in the context of Friday prayers means it is the more excellent of the two mandatory acts because a recommended act cannot substitute for an incumbent one.[52]

Shahid II invokes the *maqbula* to permit the Friday prayers during the absence of the Imam.[53] He also states that the instruction received from the twelfth Imam asking his followers to refer to those who relate his teachings shows that they can represent him during his absence. In essence, he agrees with Shahid I's ruling regarding the necessity of convening Friday prayers if a jurist is present in the absence of the Imam. He apparently even said that it is mandatory to hold the prayers even if a jurist is not present because the prayers are prescribed in the Qur'an without any preconditions.[54] An important factor in the decisions of both Shahid I and II regarding the Friday prayers was that they lived in a Sunni environment in which the Shi'is were continuously condemned for not holding the Friday prayers and for disregarding the Qur'anic injunctions on it. This was their response to the criticisms.

Shahid II further argued in an essay composed in the year 1555 that participation in the Friday prayers was an obligation on every individual (*'ayni*) because it was carried out when the Imams were present in the community. Stated differently, it was no longer optionally incumbent,

[49]Zayn al-Din al-'Amili, *Dhikra al-Shi'a fi Ahkam al-Shari'a* (Litho, 1855), *salat al-jum'a.*

[50]Al-Karaki *Jami'*, 130-1.

[51]Amirhassan Boozari, *Shi'i Jurisprudence and Constitution*, 42.

[52]Al-Karaki, Jami' al-Maqasid, 1/131.

[53]Zayn al-Din al-'Amili (Shahid II) *al-Rawda al-Bahiyya fi Sharh al-Lum'a al-Dimashqiyya, 8 vols.* (Najaf, n.p., 1966), 1/34.

[54]Sachedina, *The Just Ruler*, 188.

rather, it was required of every individual. This position was also adopted by Fayd al-Kashani (d. 1680).[55] Especially in the Safavid era participation in the Friday prayers was gradually seen as an obligation prescribed by the Qur'an without any preconditions. This had great ramifications in the community because it required every male adult to participate in the prayers. At the same time, it had the effect of accentuating the authority of the jurist who would lead them on behalf of the Imam. Later scholars went even further in ruling the personal incumbency of the Friday prayers. For example, Shaykh Ja'far Kashif al-Ghita (d. 1812) stated that anybody who claimed that the Friday prayers are not mandatory is an apostate.[56] An act that was prohibited by Ibn Idris became incumbent by the time of Kashif al-Ghita.

Khums and Juristic Authority

The gradual evolution in and increment of juristic authority becomes even more evident on the question of the collection and disbursement of *khums*. The injunction on *khums* is based on the Qur'anic verse 8:41.

"And know that whatever thing you gain, a fifth of it is for Allah and for the Messenger and for the near of kin and the orphans and the needy and the wayfarer, if you believe in Allah and in that which We revealed to Our servant,….."

Based on this verse, most Shi'i jurists have opined that the *khums* was to be divided into two segments. The Imam is entitled to a total of three shares, i.e., the shares of God, the Prophet, and an additional share as the successor to the Prophet. The rest of the shares would go to the descendants of the Prophet, i.e., the shares of the orphans, poor, and wayfarers. These were to be disbursed directly by the donor. Initially, there was no mandate that the share of the Prophet's descendants be given to the *fuqaha*'. The perplexing issue for many jurists was what was to be done with the Imam's share?

al-Mufid ruled that jurists *could* (emphasis mine) collect *khums* if it did not jeopardize their lives.[57] He also states that the people should deliver the *khums* to the recipients directly, i.e., the orphans needy, and wayfarers among the descendants of the Prophets. He adds that it is difficult to determine who should receive the Imam's share during the *ghayba*. Evidently, this was a perplexing issue that he could not resolve. Mufid erred on the side of caution by ruling that the Imam's share should be passed to trustworthy persons successively until the Imam reappears. He based his ruling on the

[55]Andrew Newman, *Twelver Shi'ism*, 185-6.
[56]Ja'far Kashif al-Ghita, *Kashf al-Ghita 'an Mubhamat Shari'at al-Ghurra,* (Litho, 1898), 251.
[57]al-Mufid, *al-Muqnia*, 276-8.

axiom that it is improper to spend the property of somebody without his permission.[58]

Al-Mufid could not find any clear textual evidence regarding how to disperse the share of the Imam during his absence. Handling the Imam's share was a major responsibility and required much care on the part of the jurists. As no provision for the Imam's share had been made in the texts, the collection and disbursement of *khums* in the Buyid period was not clearly well defined. The Buyid scholars saw little role for the jurist in distributing the *khums*, especially the Imam's share. For example, al-Murtada did not see any role for the *fuqaha* in receiving or distributing *khums*. Tusi generally follows al-Mufid in his rulings on *khums* with minor deviations.[59] He saw no role for the jurists in either receiving or distributing the *khums*. Tusi cited various options for disbursing the funds including burying the Imam's share in the ground. He preferred that the shares of the poor be distributed to them directly whereas the shares of the Imam be handed to somebody trustworthy as *wadia* or *wasiya* (trust) to be given to the Imam when he reappears.[60] These options were repeated and accepted by Ibn Idris.[61] The fact that the scholars proffered various solutions and differed among themselves demonstrates that no provision had been mandated for the jurist to either receive or distribute the *khums*.

Ibn al-Barraj, who had studied with Mufid and al-Murtada, was the first scholar to discuss the possibility of giving the *khums* to a *faqih*. However, he cautions that even the jurist cannot distribute the Imam's share; rather, he should give it to the Imam himself if he meets him or hand it to another person until he meets the Imam.[62] Ibn Idris, on the other hand, rules that one should make a will of the Imam's share and leave it as a trust. However, he does not state that the jurist should be given the Imam's share to administer.[63]

It was only from the time of al-Muhaqqiq that the question of the Imam's share of *khums* was linked to the jurists. He states that the Imam's share should be given to the most qualified individual to ensure its proper distribution. This is because he possesses *wilaya al-hukm* (authority to administer justice). For Muhaqqiq, the *faqih* can manage the Imam's share as he is the most qualified person to do so. [64] Henceforth, the scholars claimed to not only have a share of the *khums* but also in deciding how to dispose it. Muhaqqiq

[58]Sachedina, *The Just Ruler*, 238-9.
[59]Ibid., 240.
[60]Tusi, *Nihaya*, 200-291;
[61]Ibn Idris, *Sara'ir*, 114-5.
[62]Sachedina, *The Just Ruler*, 240.
[63]Ibn Idris, *Sarair*, 116.
[64]Muhaqqiq, *Sharay'i al-Islam* 1/184.

maintained that the authority that was delegated to the jurist by the Imam went beyond the judicial field. The jurist was empowered to handle the finances on behalf of the Imams. As mentioned earlier as this extension of authority was not mentioned in the normative sources or envisaged by the earlier scholars it was derived exegetically. Muhaqqiq's nephew 'Allama said that, as the representative of the Imam, the shares of Imam should be given to the *hakim* who would distribute it to the needy.[65] The share of the descendants of the Prophet, on the other hand, can be given to them directly by the donor.[66] This was another juristic innovation that directly impacted the authority of the scholars. The idea that the judicial authority of the jurist should encompass the finances of the community is barely discernible in the works before the Hilla scholars.

Following the scholars of Hilla, Shahid I and II also contended that the Imam's share be given to the jurist. However, Shahid I argued cogently that both the *zakat* and the *khums* must be given to the scholar. The views of Shahid I show a clear evolution in cementing and refining the authority of the clerics. He also added that the three shares of the Imams were not to be dispersed; rather, they should be saved and given to the Imam upon his appearance. They can, however, be used for financing marriages, trade and residence.[67] Likewise, Shaykh al-Baha'i ruled that it is obligatory to give the Imam's share to the *faqih*.[68]

A comparison between Tusi and Shahid II evinces how wide the differences on this issue are. Enhancing the judicial and financial authority of the clerics granted them autonomy from the *de facto* government. Shi'is now had their own magistrates, *muftis* and jurists, who could manage their finances and, in effect, created a community within a community. With the arrival of more favorable governments in Iran the communal activities and authority of the scholars had increased tremendously in different fields.

The extension of juristic authority was challenged by the Akhbari scholars who did not recognize the authority of the jurists. Due to this, they refused to give the Imam's share to the jurists. In the *Wasa'il al-Shi'a* of Hurr al-'Amili, for example, there is no provision for the *khums* to be given to a *mujtahid*. Muhsin Fayd Kashani went further than most, stating that the three shares of the Imam were not payable at all during the occultation.[69] Other '*ulama*'

[65]Norman Calder, "The Structure of Authority," 139. Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 222.

[66]Sachedina, *The Just Ruler*, 241.

[67]Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 222-223.

[68]Ibid., 223.

[69]Yusuf b. Ahmad al-Bahrani, *Hada'iq al-Nadira*, 25 vols. (Najaf: Dar al-Kutub, 1957), 12/462.

like Majlisi opposed this view by insisting that the entire *khums* should be given to the jurists, not just the Imam's share.[70]

With the triumph of *usulism* and consolidation of juristic power in the Qajar period it was almost unanimously agreed that the Imam's share be given to the jurists. The enhanced role of the *mujtahid* in this matter was clearly articulated by Ja'far Kashif al-Ghita who made it clear that the *khums* should be delivered to the *mujtahid* to administer.[71] For al-Najafi, as for many other Qajar jurists, the Imam's share had to be administered by the *mujtahid* and was licit for the Shi'is.[72] Murtada al-Ansari (d. 1864) however, ruled the opposite, stating that if a *faqih* asks for *khums* a donor is not obliged to give it to him.[73]

It is important to remember that the enormous revenue generated from *khums* was critical in accentuating the power and prestige of the jurists. By the Qajar period, they could not only adjudicate between disputes, enforce the *hudud* and lead Friday prayers, they could also control the finances of the community. Gradually the community came to rely on the jurists not only in religious but also on financial matters. The institutionalization of religious leadership and centralization of *khums* inevitably had the effect of enhancing the status of the jurists for they were not only the source of reference for religious directives but could now manage and direct the finances of the community. By claiming the right to distribute the Imam's share of the *khums* the jurists asserted not only their authority but also their special relationship with the Imam. Paradoxically, although the ability to collect and disburse *khums* made them independent of the state the jurists became more reliant on the laity to receive the dues. According to Mutahhari, it is this dependence that has made some of them corrupt. The '*ulama*' have gained power and authority but have sacrificed freedom. In a scathing assessment of the clerics, Mutahhari says, "The '*ulama*"'s catering to the populous results in hypocrisy, flattery, pretension, concealment of truth, haughtiness of demeanour, pomposity, and the proliferation of prestigious titles and designations to a degree that is unique in the world."[74]

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[70]Sachedina, *The Just Ruler*, 242.

[71]Ja'far Kashi al-Ghita, *Kashf al-Ghita*, 362-3.

[72]Muhammad b. al-Hasan al-Najafi, *Jawahir al-Kalam*, 43 vols. (Najaf: Dar al-Kutub al-Islamiyya, 1958), 16/156-165.

[73]Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 158.

[74]Mortaza Motahhari, "The Fundamental Problem in the Clerical Establishment in *Shi'ism: Critical Concepts in Islamic Studies*, ed. Paul Luft and Colin Turner (New York: Routledge, 2007), 341-2.

Zakat and the Jurists

Consolidation of juristic authority went hand in hand with increased religious, social, administrative, and financial services in the community. To be sure, the evolution of these services occurred over a period of time. Initially the scholars were reluctant to assume positions that they were not authorized to as they believed these were the prerogative of the Imam. Subsequently, in addition to deducing and issuing legal edicts, the jurists formulated laws on the collection of various forms of religious taxes, pious endowments, and funds that were mixed with illegal transactions. They justified this by claiming to act on behalf of the occult Imam.

In contrast to the collection and disbursement of *khums* there was little controversy on the '*ulama*'s collection and disbursement of *zakat.* al-Mufid was apparently the first scholar to state that the *zakat* must be given to a trustworthy jurist during the absence of the Imam.[75] His student al-Murtada preferred that the *zakat* be entrusted to the jurist but he did not say it is mandatory to do so.[76] Tusi preferred that the *zakat* be given to the '*ulama*' for disbursement.[77] Later on, Muhaqqiq ruled that the *zakat* should be given to the jurist in the absence of the Imam because he is more capable and learned in the categories of the *zakat* and its distribution.[78] The same views were echoed by 'Allama although he added that the donor can choose to distribute the *zakat* himself.[79]

With the passage of time an increasing number of scholars asserted that the *zakat* funds should be channelled through the scholars rather than be distributed by the donor. That the juristic opinions were not always consistent on religious taxes can be seen by 'Allama's statement that it is recommended to give the *zakat* to the jurist but obligatory to give him the *khums.*[80] By the time of Shahid I the payment of both forms of taxes had to be given to the jurist. For him, *zakat* was a compulsory tax that was not to be administered by the government but by the jurists of the time.[81]

Due to the hermeneutical efforts of the scholars of Hilla '*ulama*' in the

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[75]Al-Mufid, *al-Muqnia*, 252.

[76] Norman Calder, "The Structure of Authority," 121.

[77]Tusi, *Nihaya*, 185.

[78] Muhaqqiq, *Sharay'i al-Islam*, 49, Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 221.

[79]Hasan b. Yusuf Allamah Al-Hilli, *Qawa'id al-Ahkam fi Ma'rifa al-Halal wa'l Haram*, (Tehran: Litho, n.d.), 23. *Tahrir al-Ahkam al-Shari'a 'ala madhhab al-Imamiyya* (Tehran: Litho, 1896), 67.

[80]Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 222.

[81]Norman Calder, "The Structure of Authority,"124; Ahmad Kazemi Moussavi, *Religious Authority in Shi'ite Islam*, 222.

Safavid era collected both genres of religious taxes. For example, Shahid II stated it is obligatory to give the *zakat* to the jurist if he demands it, a point that is absent in the writings of earlier scholars.[82] He argued that the jurist knew better how *zakat* should be disbursed. Since the *zakat* could be disbursed among eight groups of recipients, the scholars could also choose which of the recipients they should disburse the *zakat* to. They could distribute it equally among them or they could give more to one group than another. Henceforth, juristic authority lay not only in receiving and distributing the *zakat* but also in determining how to disburse it. Later, the scholars were free to apportion the *zakat* as they deemed appropriate even if it was arbitrary.[83]

Especially after the triumph of the *Usulis* and the consolidation of clerical authority, payment of religious taxes to the scholars increased considerably. The jurists were empowered to collect both the *zakat* and khums controlling, in the process, the wealth of and its distribution to the community. A donor who withheld religious dues was seen as rebelling against the Imam.[84] In contrast to the earlier period, contemporary Shi'is are mandated to pay religious dues to their *marja'* or one who has been granted the permission (*ijaza*) to collect them on his behalf, something that was unknown during the time of the Buyid scholars. It is also stipulated that payment of the dues to one who is not authorized by a *marja* to collect them is invalid. The donor would have to pay the *khums* again.[85] The collection and distribution of the shares of the Imam have become the exclusive prerogative of the *mujtahid* who would determine how it should be spent in the community. Acts that were at one time seen as recommended were later construed to be obligatory. In the process, the clergy became agents not to the donor but to the recipient by virtue of his status as agent of the Imam. As their role of *al-na'ib al-'amm* became more pronounced, the jurists' authority and control over the Shi'i populace was enhanced. The increasing authority of the '*ulama*' led some of them to claim the comprehensive all-embracing authority of the Prophet and Imams.

Wilaya al-'Amma

The increased functions of the '*ulama*' in the community led some jurists like al-Najafi to lay claims to the comprehensive authority (*al-wilaya al-'amma al-mutlaqa*) that the Imams had because "if the *wilaya* was not

[82]Shahid II, *al-Rawda al-Bahiyya*, 50.

[83]Norman Calder, "The Structure of Authority," 129.

[84]Sa'id Amir Arjomand, *The Shadow of God*, 231.

[85]See Ja'far Kashif al-Ghita, *Kashf al-Ghita*, 362-3.

all-encompassing a great number of issues related to Shi'is would have remained unattended to."[86] Likewise, his contemporary Mulla Ahmad al-Naraqi (d. 1829) argues forcefully that the *faqih* is the best creature of God after the Prophet and Imams and that his authority was akin to that of the Prophet and Imams. To validate his claims, he invoked the investiture of the Imam's deputyship in the *maqbula* and other similar traditions.[87]

For al-Naraqi, authority is not confined in the past or the texts; rather, it was fully delegated to the jurist by the Imam himself. In other words, the jurist now possesses the complete all-embracing authority that the Imam does. Fayd al-Kashani (d. 1680), an Akhbari scholar "maintains that the authority of the trusted *fuqaha*' is the same as the authority of the Imam except in calling for offensive jihad. This authority belongs to them, he says, based on the right of deputyship (*haqq al-niyaba).*"[88]

Al-wilaya al-'amma of the *fuqaha*' that al-Naraqi insisted on was challenged by al-Ansari who refuted the idea by invoking the principle of *asalat adam* i.e., unless there is conclusive proof, an injunction cannot be established based on presumptive proof. In other words, by default, there is nothing to prove that the jurist has rights to such extensive authority.[89] Al-Ansari maintained that juristic authority was confined to issuing legal edicts and arbitrating between litigants. He famously wrote that "it would be easier to prove pigs fly than to prove all-encompassing authority (*al-wilaya al-'amma*) for the jurist"[90]

In recent times, the idea of *al-wilaya al-'amma* was promulgated and enforced by Khumayni when he established an Islamic state in Iran. Khumayni claimed that the *faqih*'s powers were like that of the Prophet and Imams since he was undertaking functions on their behalf. For him, an Islamic government could nullify government contracts, destroy mosques and even stop people from performing mandatory devotional acts like going for *hajj*. He states,

> Governance, which is a branch of the comprehensive authority of the Prophet, is one of the primary laws of Islam and takes precedence over secondary injunctions, even those like the salat (*prayer*), fasting and pilgrimage. A *faqih* can demolish a mosque or a house which is blocking a street and compensate the owner. If necessary, the jurist can close

[86]Seyfeddin Kara & Mohammad Saeed Bahmanpour "The Legal Authority of the Jurist and its Scope in Modern Iran," in *Journal of the Contemporary Study of Islam*, no. 1, 1, (2020): 10. Al-Najafi, *Jawahir*, 21/393-4.

[87]Mulla Ahmad b. Mahdi al-Naraqi, *'Awa'id al-Ayyam* (Qum: Maktaba Basirati, 1903), 187-9.

[88]Seyfeddin Kara & Mohammad Saeed Bahmanpour, "The Legal Authority of the Jurist," 11.

[89]Murtada al-Ansari, *al-Makasib* (Tabriz: Matba'a Ittila'at, 1955), 153.

[90]Seyfeddin Kara & Mohammad Saeed Bahmanpour, "The Legal Authority of the Jurist," 11.

> a mosque, and [even] can destroy a divisive mosque if it is impossible to prevent harm without abolishing it. The government can [also] unilaterally annul contracts which it has agreed with people when they conflict with the interests of the state and of Islam.[91]

Khumayni contended that religious injunctions could be overridden by the necessities of the political order. As long as the interests of the community demand it, there are no restrictions to an Islamic government's power and authority. His works exemplify an interpretive activity that challenges the existing vision of juristic authority by revisiting and re-reading previous sources. Khumayni engages in an interpretive exercise and extends the authority of the '*ulama*' well beyond what previous scholars envisaged.

The problem of upholding the concept of *al-wilaya al-'amma* is the lack of textual evidence to support such a notion. Those who claimed *al-wilaya al-'amma* did so exegetically, based on their interpretation of the sources and the application of reasoning. Despite an extensive discussion on the subject, Khumayni's notion of *wilaya al-faqih* and *al-wilaya al-'amma* was not embraced by many of his peers. The prominent *mujtahid* of the last century Ayatullah Abu al-Qasim al-Khu'i (d. 1992) dismissed the notion of the comprehensive authority of the scholars. He maintained that *al-wilaya al-'amma* is reserved exclusively for the Prophets and the Imams. The only form of juristic authority that al-Khu'i was willing to admit was in the juristic and social fields (*al-umur al-hisbiyya*).[92]

Conclusion

Authority, as conceived in Shi'ism, was placed exclusively with the Prophet and the Imams. Through the Imam's designation, the *maqbula* extended this to the jurists of the community. The extent and scope of this authority was debated and disputed by Shi'i jurists over many centuries. Many jurists engaged in text-based hermeneutics to extend their authority over a wide ambit of religious, economic and political spheres.

In Qajar Iran, centralization of religious leadership under the concept of *marjiʿ al-taqlid* greatly solidified and strengthened clerical authority especially when it was declared that religious acts that were not in conformity to a *marja''s* rulings were invalid. In post-revolutionary Iran Ayatullah Khumayni invoked the concept of *al-wilaya al-faqih al-mutlaqa* (comprehensive authority of a jurist) that had been propounded by jurists

[91] *Sahifa-ye Noor*, Vol. 20, p. 74

[92] See Ayatullah Abu al-Qasim al-Khu'i, *al-Tanqih fi Sharh al-'Urwa a-Wuthqa*, ed. Mirza 'Ali Gharawi Tabrizi (Qum: Bustan, 1990), 424. He reiterated this point to me in a personal discussion with him in 1989.

like al-Naraqi to establish a theocratic state. Claiming to have the same degree of authority as the hidden Imam, he maintained that edicts issued by the *wali al-faqih* (holder of the office of *wilaya al-faqih*) were to be treated as primary rather than as secondary ordinances. This meant that he could legislate binding precepts based on what is conducive to the benefit of the community.