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FOR EUROPEAN LEGAL HISTORY

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Max Planck Institute for European Legal History

research paper series

No. 2017-04 • <http://ssrn.com/abstract=3025438>

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Authorized Interpreters of Islamic law – the Shī'a View

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Katariina Simonen

Abstract

The question of who is authorized to interpret Islamic law is a difficult one due to the plurality of different schools of Islamic jurisprudence, each of which allocates the authority very differently. Yet, any dialogue in matters of Islamic law requires the correct interlocutors to be identified. This topic is as under-researched in Western legal and security-policy studies as it is important.

This study attempts to identify the correct interlocutors in legal matters under Twelver Shī'ism, which is the state religion in Iran. In terms of its legal history, such authority has developed into a hierarchical, yet pluralistic system of legal authority since the end of the 18th century, with the victory of the so-called Uṣūlī school of jurisprudence and the emergence of grand jurists (*marāji'-i taqlīd*). The process of designating absolute authority continues informally, but a key prerogative is superior knowledge of Islamic law and religion.

Such grand jurists have, at times, exercised great influence over the ruling Shāhs. Other times, they have preferred to remain teachers in religious schools. An important change took place with the 1979 Islamic Revolution, through which the guardianship of the jurist (*vilāyat-i faqīh*) was crystallized in the Iranian constitution. Since then, grand jurists have had to accommodate another religious and political authority, the guardian jurist or supreme leader (*valī-yi faqīh*). To date, the division of authority between the guardian jurist and grand jurists remains unresolved. The future will depend on the strength of the requirements developed by the Uṣūlī school regarding superiority in learning for any attribution of authority.

Introduction

This is an article about the historical development of authority to interpret religious law in Twelver Shī'ism, which is the state religion in the Islamic Republic of Iran. This inquiry is prompted by the lack of research on who is authorized to interpret Islamic religious law in Western legal and security-political literature. In fact, the most common misconception in the West is to view Islam as the religion of the sword in reaction to the works of radical

Muslims. Radicals often justify their terror attacks on America and other states by quoting from the Qur'ān's "Verse of the Sword" (9:5).¹ However, they are often neither clerics, religious scholars, nor historians of early Islam, with scant knowledge of Islamic history, military thought, or morality.² Hence, they can hardly be considered representative of Islamic beliefs or behavior.

Another example of a lack of knowledge and its implications can be found in the negotiations over the Iranian nuclear program. In Iran, religious authority to interpret law coincides with political power. Not only the Iranian leadership, but also grand jurists have consistently argued that nuclear weapons are contrary to Islam (*harām*). However, due to the lack of knowledge of Islamic law and the ensuing lack of trust among Iran's counterparts in the negotiations, resolving the conflict peacefully took over a decade, and at times military escalation of the conflict seemed imminent.³ The lack of *scientific* attention to the role of Islamic law in prohibiting nuclear weapons was remarkable in the otherwise abundant literature on the Iranian nuclear program.⁴

It is obvious that misconceptions and lack of knowledge make fertile ground for propaganda by those involved in conflict businesses.⁵ This article attempts to remedy that situation by means of a legal-historical inquiry into authorized interpretation in Shī'i religious law: who is authorized to interpret religious law (family law, commercial law, criminal law, law of war, etc.)? In other words, who are the interlocutors with whom should we engage in dialogue when the subject matter of our interest is Islamic law?

The focus of this article is the development of authority in *Twelver Shī'ism* due to its hierarchical, yet pluralistic, system of authority personified by grand jurists.⁶ Since the Islamic Revolution in 1979, the religious authority has had to accommodate another authority: the Supreme Leader. The central interest of the article bears, first, on the victory of the presently dominant Uṣūlī school of jurisprudence over the rival Akhbārī school of jurisprudence of the late 18th and early 19th centuries and on their key legal concepts, which facilitated the conceptual emergence of a grand jurist (*marja'-i taqlīd*). Secondly, the article follows the gradual entry of the religious authorities into the political realm, highlighting a historically interesting episode in Iranian history: the so-called Tobacco Protest (1891-1892). The final chapter discusses the how the doctrine of guardianship of the jurist crystallized during Āyatallāh Rūḥ-Allāh Khumeinī's reign along with the competition be-

¹ HAYWARD (2012).

² ABOUL-ENEIN/ZUHUR (2004).

³ ARMS CONTROL ASSOCIATION (2014).

⁴ PERSPECTIVES ON THE IRAN NUCLEAR DEAL (2015).

⁵ AVERY, JOHN (2012).

⁶ AVERY, P. et al. (eds.) (1991) 706-707.

tween the interpretative authority of the governing jurist and the grand jurists.⁷ The demarcation of authority is a highly complex issue that remains unresolved.

The beginning of this article briefly covers the period of early Islam that led to the development of different schools of Islamic jurisprudence. The purpose is to highlight the plurality of such schools, including the mainstream Sunni Ḥanafite, Mālikite, Shāfiʿite and Ḥanbalite schools that have not developed any system of hierarchy for religious interpreters and could be contrasted with the (minority) Twelver Shīʿism.⁸ Obviously, the question of authorized interpreters needs to be studied in the appropriate context by respecting the legal and religious conventions of the school in question.

As for the transliteration of Arabic, the article follows the modified IJMES Transliteration Chart.⁹ To facilitate the readers' acquaintance with the key legal concepts of Uṣūlī jurisprudence, both an English version and an *italicized* Arabic version of these concepts will be provided.

1. Early Islamic Community – A Question of Succession

Properly analyzing juristic authority necessitates a recapitulation of certain elements of the social history of the early Islamic community (c. 610-661). The early Islamic community rested on the charismatic authority of Prophet Muḥammad, who experienced the visions and revelations of Allāh's commands, began proselytizing, and attempted to recruit followers and build a local and regional reputation in what is now western Saudi Arabia while attempting to overcome tribal opposition in the key trading city of Mecca.¹⁰ Following the Prophet's death in 632, the question of succession arose among the Prophet's followers, leading to the establishment of a caliphate in Madīna. Significant portions of the Muslim community accepted Abū Bakr as the leader of the Islamic community (*ummah*) and later recognized Abū Bakr's designation of ʿUmar as the second caliph. The legitimating authority of the first caliphs was partially based on piety (*taqwā*), a characteristic required by the Qurʾān for legitimate authority and exemplified by the Prophet, with proximity of relation to the Prophet ("Companions") and membership in the Quraysh tribe as other legitimating factors.¹¹ Although reliance on tribal credentials insured the unity of the Islamic community after the Prophet's death, piety, as measured according to the Qurʾān by the

⁷ Āyatallāh ('sign of God' in Arabic) is used to designate someone in the Shīʿite religious hierarchy who has demonstrated advanced knowledge of Islamic law and religion. AKHAVI, SHAHROUGH (1980) ix.

⁸ HALLAQ, WAEL B. (2009) 60 f.

⁹ International Journal of Middle East Studies, with special thanks to Muhammad Hozien, <https://ijmes.chass.ncsu.edu/docs/TransChart.pdf>. <Accessed 10 April 2017>.

¹⁰ AKHAVI (1980) note 7.

¹¹ GAISER, ADAM R. (2010) 29 f.

visible adherence to the moral precepts of Islam, ideally superseded all tribal considerations.¹² Moreover, Prophet Muḥammad reportedly ordered believers to obey even “a mutilated Ethiopian slave ... so long as he leads you in accord with the Book of God.”¹³ Hence, reliance on tribal credentials could directly contradict piety as the legitimate basis for political authority.

The potential tension between re-emerging tribal norms for determining leadership and the Qur’ānic and Islamic standards for pious authority was temporarily resolved in the time of Abū Bakr and ‘Umar, since their piety and devotion to the Qur’ānic message and to the Prophet Muḥammad’s mission was widely known. In fact, they are also called rightly-guided (*rāshidūn*) caliphs. However, during the reign of the third caliph, ‘Uthmān, the tension between the requirements of moral rectitude and of unity based upon an Arab-Quraysh monopoly of power re-materialized due to ‘Uthmān’s transgression of Islamic norms of conduct and his failure to meet the eligibility criteria for leadership, leading eventually to his death at the hands of Muslim rebels in 656.¹⁴

The reign of the fourth caliph, ‘Alī b. Abī Ṭālib, the son-in-law and cousin of Prophet Muhammad, was a special case as far as the definition of authority was concerned. Three competing visions of authority clashed during his reign, resulting in the Khawārij and Shī’ite schisms. Like previous caliphs Abū Bakr, ‘Umar and ‘Uthmān, ‘Alī was an early Companion of the Prophet as well as his cousin and son-in-law, a member of the Quraysh tribe and a righteous person. Later Sunni tradition also regards ‘Alī as a rightly guided caliph, and implicitly accepts him on the basis of these qualifications.¹⁵ The Shī’a view on the question of authority was different in that the decisive factor was descent from the Prophet’s tribe of Hāshim, with piety and moral rectitude assumed to be inherited through membership in the Prophet’s family (*ahl-al bayt*).¹⁶ This interpretation could also be justified on the basis of the Qur’ān, which had also portrayed the families of other prophets as their inheritors and successors. Further, in the Traditions of the Prophet (*Ḥadīth*), the Prophet is to have said at a well called Ghadīr al-Khum that to whomever he was a *mawlā* (the meaning in this context is understood “a leader”), ‘Alī was also his *mawlā*.¹⁷ Thus, the Shī’a have considered ‘Alī as the rightful leader of the community of believers and the first Shī’a Imam (leader) since the very beginning. Consequently, ‘Alī, his sons Ḥasan and Ḥusayn, and the nine succeeding descendants through the line of Ḥusayn were to be the imams of the community of believers of the Twelver Shī’a faith.¹⁸ The legitimacy of the first three caliphs was rejected.

¹² *Ibid.*

¹³ *Ibid.* Gaiser refers to Ibn Sa’d’s wording of the prophetic tradition (*Ḥadīth*).

¹⁴ CRONE, PATRICIA/HINDS, MARTIN (1986) 60 f.

¹⁵ GAISER (2010) 32-33 note 11.

¹⁶ AL-SHAYKH AL-MUFĪD (1957) xxi f.

¹⁷ GAISER (2010) 33 note 11.

¹⁸ ARJOMAND, SAID AMIR (1988a) 3 f; WALBRIDGE, LINDA (2001) 3 f.

2. Authority Derives from the Imamate and Knowledge

The Shīʿa doctrine of authority is based on the concept of the imamate, according to which the twelve Imams are the true successors of the Prophet Muḥammad, having been appointed by Allāh through His Prophet.¹⁹ There has been a remarkable consensus among the Shīʿite jurists throughout the centuries regarding the interpretation of the “Authority Verse” of the Qurʾān (Sūrah an-Nisā 4: 59), which reads: “O you who have believed, obey Allāh and obey the Messenger and those in authority amongst you. And if you disagree over anything, refer it to Allāh and the Messenger, if you should believe in Allāh and the Last Day. That is the best [way] and best in result.”²⁰ Shīʿite jurists considered that “those in authority” are neither the secular rulers nor the religious scholars (*ʿulamā*) – as both are susceptible to error and sin – but rather the infallible Imams: ʿAlī and his eleven descendants.²¹ A very influential contemporary Qurʾān commentary, Ṭabāṭabāʾī’s *Tafsīr al-Mīzān*, provides the following comments on Verse 4: 59, as follows: “Therefore ‘those in authority’ must refer to the individuals from the Islamic community who are infallible [*māṣūm*], whose recognition depends on the explicit designation of God or his Messenger, and to whom obedience is incumbent. All this corresponds only to what have [sic] been related from the Imams of the House of the Prophet, may peace be upon them, as ‘those in authority’.”²² Furthermore, from the eighth century onward, the charismatic authority of the Imams as supreme political leaders and teachers of religion became intimately linked to their knowledge (*ʿilm*).²³ This concept had no counterpart in the Sunni theory of the caliphate.

After the eleventh Imam al-Ḥasan’s death, in 873, the twelfth Imam remained in hiding but kept in contact with his followers through four especially appointed emissaries. This period is called the Lesser Occultation (*Ghayba al-Sughrā*). On the death of these four emissaries in 940, the Imam sent an announcement that he was going into permanent hiding and would only return at the end of time, which began the Greater Occultation (*Ghayba al-Kubrā*). The concept of knowledge became all the more important during the latter Occultation, since the portion of the Imam’s authority that was most easily transferrable to the Shīʿite religious scholars in the Imam’s absence was precisely that derived from knowledge.²⁴ Hence, Imamī Shīʿism adopted a system of vicegerency, whereby authority (*vilāyat*) is entrusted to *just and capable* scholars (*al faqīh al-ʿādil*) who act as deputies to

¹⁹ AL-SHAYKH AL-MUFĪD (1957) xxii note 16.

²⁰ Translation obtained from Sahih international, <https://quran.com/4/59>. <Accessed 2 May 2017>.

²¹ ARJOMAND, SAID AMIR (1988b) 192 f.

²² *Ibid.*

²³ KOHLBERG, ETAN (1988) 25.

²⁴ ARJOMAND (1988a) 3 note 18.

the absent Imam.²⁵ The guardianship of the jurist was legitimized by, and his authority was related to, the original and absolute authority of God. Whereas the Imams were specifically appointed as guardians of legitimate authority, jurists (*fuqahā*) are selected not explicitly but implicitly from among those who possess the correct qualities for leadership.²⁶ Thus, during the Occultation, Shī'ite jurists' collective office was considered to hold the general vicegerency (*vilāyat 'āmma* – universal authority).

The scope of the authority delegated to the jurists has always been ambiguous. In his historical evaluation, Vaezi distinguishes two strands of thought in this regard: one considers that the jurists' vicegerency is universal, whereas the other is more careful, entrusting some duties to the jurists in addition to authority to make a decree, to judge and to act as guardians for a particular reason. The latter view coincides with early Shī'a jurisprudence, when the Shī'a community was a minority without political power. Jurists remained silent on governance and political issues due to the social and political circumstances of the time and resorted to the concept of *taqiyya*, i.e. self-protection through dissimulation. Moreover, this reticence owed greatly to the persecution of the Shī'ites at the hands of the ruling Sunni elites, which meant that law in Shī'ism was long incomplete, not least because of the absence of crucial institutional structures and the general lack of public financial and other forms of support for the juristic class and its intellectuals.²⁷ This changed when the Safavids (1501-1722) came to rule Iran in the early 16th century, sponsoring Twelver Shī'ism as its official creed. It is also from this period onward that one can meaningfully talk about a class of Shī'i religious scholars.²⁸ The religious institution was, however, always subordinate to the political institution.²⁹ It was only much later under the Qajar dynasty (1779-1925) that the balance between the religious and political institutions changed with the victory of the so-called Uṣūlī school of jurisprudence and the consolidation of universal juristic authority into the institution of *marja'-i taqlīd*.

²⁵ VAEZI, AHMED (2004).

²⁶ AMANAT, ABBAS (1998) 99.

²⁷ HALLAQ (2009) 113-114 note 8.

²⁸ ALGAR, HAMID (1969) 5.

²⁹ LAMBTON, ANN (1964) 115 f.

3. The Formation of Hierarchy

3.1 Consolidating the Uṣūlī Legal School and Its Key Concepts

Two legal schools, the Uṣūlī and Akhbārī schools of jurisprudence, have been at odds over the official Shīʿa doctrine of authority since as early as the eleventh century.³⁰ There is some debate about when to date the beginnings of the Uṣūlī – Akhbārī dispute, and some 13th-century texts talk of a dispute between two opposing groups of Imāmī Shīʿis: the *Akhbāriyyūn* (“traditionalists”) and *Uṣūliyyūn* (“rationalists”).³¹ It is with Muḥammad Amīn al-Astarābādī (d. 1624 or 1627) that the usage of the terms *Akhbāriyyūn* and *Uṣūliyyūn* begins to stabilize and one sees “schools” of thought emerging that demonstrate a measure of doctrinal coherence, internal historical perspectives, and nascent institutional structures (al-Astarābādī championed the way of the Akhbārīs).³² The dispute between these schools centered on the problem of the validity of the jurists’ (*mujtahid*) speculative reasoning after the occultation of the Twelfth Imam closed the gate to acquiring knowledge.³³ Essentially, this meant investigating how to learn about religious ordinances in the absence of the Imam, the previous source of knowledge. Hence, the dispute centered on the principles and methodology of jurisprudence (*uṣūl al-fiqh*) and on issues relating to *ijtihād*, which is the exercise of rational judgment by the learned in matters of religious law, and *taqlīd*, which is the submission to the directives of the learned in matters of religious law.³⁴ The Akhbārīs completely rejected these principles, holding that the entire community, learned and non-learned alike, should submit exclusively to the guidance of the Imams. More specifically, the reports (*akhbār*) of the Imams were the only legitimate source of law, implying that the Qurʾān and even the Traditions of the Prophet could not be interpreted directly but only through the prism of the Imams’ statements.³⁵ In order to expand the material available in the search of the Imams’ interpretations (*tafsīr*), the Akhbārīs declared all reports found in the various collections made by the earliest Shīʿī scholars to be sound, that is, historically authentic and legally relevant.³⁶ In contrast, the Uṣūlīs considered that the texts of revelation, from which God’s law can be deduced, are on certain occasions unclear or even silent. Hence, the Uṣūlīs proclaimed the directives of the learned and of their practice of independent reasoning to be legitimate.

The decisive stages of the Akhbārī–Uṣūlī controversy took place in the shrine cities of Iraq: Najaf and Karbalā. The Akhbārīs initially enjoyed complete dominance in these

³⁰ HALLAQ (2009) 113-114 note 8.

³¹ GLEAVE, ROBERT (2014) 415 f.

³² *Ibid.*

³³ MOUSSAVI, AHMED KAZEMI (1985) 35 f.

³⁴ NEWMAN, ANDREW (1992) 24 f.

³⁵ GLEAVE (2014) 415 f note 31.

³⁶ *Ibid.*

shrine cities, which was facilitated by the Safavid state's aversion to allowing an independent *mujtahid*-dominated judiciary promulgated by the Uṣūlīs to emerge.³⁷ However, after the collapse of the Safavid Empire and the ensuing political instability, the Uṣūlī legal school was able to emerge as the dominant legal school from the late 18th century (today Akhbārīs are restricted to a few villages in southern Iran, Bahrain, and pockets in India). A great Uṣūlī scholar, Āqā Muḥammad Bāqir Bihbihānī (1705-1791), was instrumental in breaking the supremacy of the Akhbārīs through his writings, teachings, and his practical vindication of the validity of independent reasoning by the learned, as well as the necessity for ordinary people to emulate the most learned jurist.³⁸ Bihbihānī wrote a refutation entitled *al-Fawā'id al Uṣūliyya* of the chief Akhbārī text (*al-Fawā'id al-Madaniyya* by al-Astarābādī). In fact, Bihbihānī was the first in the line of great jurists whose example, independent reasoning, and upholding of the principle of *taqlīd* has provided his successors and the Shī'ī community with continuous leadership and guidance in affairs personal and religious as well as national and political up to the present day.³⁹ The function of jurists asserted by Bihbihānī was raised to its highest potential by Shaikh Murtaẓā Anṣārī (d. 1865), author of an important work of jurisprudence, *Farā'id al-Uṣūl*, and Āyatallāh Mīrzā Ḥasan Shīrāzī, the central figure of the Tobacco Protest (discussed below), who both rose to the position of sole grand jurist of the whole Shī'ī community and obtained potentially immense power.⁴⁰

With the Uṣūlī school's victory over the Akhbārī in the 18th century, the key Uṣūlī concepts of *ijtihād* and *taqlīd* became central to the formation of the authority to issue religious interpretations. The Uṣūlī divide the community clearly into jurists, who are entitled to practice rational judgment, and laypersons (*muqallids*), who are obliged to submit to the directives of the learned in religious matters.⁴¹ Jurists may not claim absolute authority for themselves, since the result of rational judgement is never more than *ẓann* (reasonable presumption), so jurists may pronounce different or contradictory rulings on the same matter. Hence, juristic disagreement (*ikhtilāf*) is admitted.

A layperson is to choose a jurist whose directives he will follow; the choice of a jurist as a paragon depends primarily on the observation of superior learning and piety that inspire confidence in his worthiness. Most later jurists have considered superiority in learning (*a'lamīyat*) the key prerequisite (even over justice and godliness) for absolute legal authority over the community (*marja'iyat-i taqlīd-i tāmm*), even though there was no theoretical justification in Uṣūlī jurisprudence for such authority, and *a'lamīyat* was interpreted without clear definition of its boundaries. According to Āyatallāh Yazdī (d. 1920), the most

³⁷ *Ibid.*

³⁸ MOUSSAVI (1985) 35 f note 33.

³⁹ AVERY, P. et al. (1991) 713 note 6.

⁴⁰ ALGAR (1969) 162-164 note 28.

⁴¹ HALLAQ (2009) 117-124 note 8.

learned *mujtahid* is he who is most informed about the rules and sources of jurisprudence and is most capable of deducing religious ordinances.⁴² Later juristic authorities have not challenged Shaikh Murtaẓā Anṣārī's delineation of this point in his *Ṣirāṭ al Najāt*, as follows:

What is intended by [the term] *a'lam*, is the one who is more skillful (*ustādtar*) in deducing God's law (*ḥukm*) and comprehending it from the lawful evidence (*adalla-yi shar'īya*). For recognition of the *a'lam* and obligation of referring to him, testimony of a single just man (*a'dl-i vāḥid*) who is one of the people of insight is sufficient to provide reasonable presumption (*ẓann*).⁴³

Superiority in learning means that the grand jurist has to be versed in Arabic, logic, theology, exegesis, traditions, jurisprudence, and the principles and methodology of jurisprudence. He must have demonstrated his knowledge and established for himself a scholarly reputation, which can be evidenced by a number of licenses issued by reputable religious scholars, and through his teachings, lectures, and writings.⁴⁴ Authorship of a legal manual (*risala*) is said to indicate a person's willingness to become a grand jurist. In addition to these qualifications, a grand jurist requires a number of features, such as maturity, intelligence, piety, in addition to the ability to provide a basic livelihood for his own students (so-called bread money, *nān-i tullāb*), for which the grand jurist should reside in a religious city like Najaf or Qum, and the ability to raise money in terms of religious tax (*khums*) and *sahm-i Imam*, which is the income received by prominent scholars as authorized deputies of the Imam.⁴⁵

With the evolution of clerical leadership and authority, the transformation of jurists' functions from mere teachers of the religious schools to powerful figures in urban life played a central role. No legal process was laid down by the Shī'a to designate the grand jurist or the required qualifications. Instead, the institution developed smoothly, and its presence was barely felt at times. In time, such a person "emerged," became known to all, and was acknowledged by general consensus.⁴⁶ The selection or emergence of a grand jurist has been a topic of constant discussion in the community of learned Shī'a jurists.⁴⁷ The process has been dynamic and self-guiding in the sense that sometimes the authority of the grand jurist has been uncontested, as in the case of Shaikh Murtaẓā Anṣārī, whose leadership united the religious community. Then again, there were times, such as the period after Shaykh Anṣārī's death, when the leadership (*riyāsat*) resumed its plurality.

⁴² AMANAT (1998) 98 note 26; MOUSSAVI (1985) 39 note 33.

⁴³ AMANAT (1998) 98 note 26.

⁴⁴ MOUSSAVI (1985) 44 note 33.

⁴⁵ *Ibid.*

⁴⁶ LAMBTON (1964) 119 note 29.

⁴⁷ GLEAVE, ROBERT (2007) 59 f.

3.2 *The Realms of the Religious and the Political – Separate and Together*

Sometimes clerical leadership would extend to politics. The Tobacco Protest under Grand Āyatallāh Mīrzā Ḥasan Shīrāzī's provides an excellent example of how clerical leadership extended almost naturally to state matters in order to defend the common interests of the people. Initially, Mīrzā Ḥasan Shīrāzī and Mīrzā Ḥabīballāh Rashtī, both pupils of Shaykh Anṣārī, enjoyed equal authority. However, by the 1880s, Shīrāzī's fame had surpassed that of any other jurist. This was chiefly because of his more systematic endeavors to achieve two objectives: first, to attract merchant support and funds; and second, to expand his own network of students who came to occupy high positions throughout Iran, Iraq, India, and the Caucasus, forming a network of jurists with primary allegiance to Shīrāzī.⁴⁸ The Tobacco Protest, as described below, finally sealed unified leadership under Shīrāzī.

The Grand Āyatallāh was instrumental in forcing the ruler Nāṣir ud-Dīn Shāh to cancel the exclusive rights he had granted in 1889 to the British Imperial Tobacco Company for the production, sale, and export of all Iran's tobacco in return for annual royalties (the so-called Regie Concession). Furthermore, regulating the yearly crop was the company's prerogative. However, the tobacco crop was widely considered a valuable national asset by the Iranian populace, who not only prided themselves on the superior quality of their product but also greatly depended on its revenues. Selling out to a foreign company elicited widespread outrage. Protests broke out all over Iran as soon as company agents started activity in Iran in 1891, but the Shāh refused to pay attention. Shī'a and Sunni scholars in Iran, supported by the merchant class, turned to Āyatallāh Shīrāzī for help. The Shāh chose to ignore the Āyatallāh's requests to reconsider the Regie Concession.⁴⁹ As a follow-up, an edict supposedly issued by Āyatallāh Shīrāzī appeared in Tehran in early December 1891 and prohibited the use of tobacco in any form as tantamount to war against the Hidden Imam. The effect was immediate and dramatic: the use of tobacco was disdained throughout the country.⁵⁰ All across Iran, farmers refused to grow tobacco, merchants refused to sell tobacco, and servants refused to serve tobacco. Even the Shāh's wives stopped smoking in an act of solidarity with the Iranian people, and the Shāh's own servants refused to prepare his hookah. In the aftermath of the edict and, the Shāh was eventually forced to cancel the agreement. Āyatallāh Shīrāzī relegitimized the use of tobacco with an edict on 26 January 1892.

In the years following the death of Āyatallāh Shīrāzī in 1895, solitary leadership changed once again to a plurality of leading jurists.⁵¹ According to Amanat, political leadership was Shīrāzī's legacy and became more explicit under his successors. Since the Persian Constitutional Revolution (1905-1911), the *marāji' 'uzam* ('grand authorities') has

⁴⁸ AMANAT (1998) 116 note 26.

⁴⁹ *Ibid.* 119-120.

⁵⁰ ALGAR (1969) 211 note 28.

⁵¹ AMANAT (1998) 121-122 note 26.

been the most commonly used reference with regard to high-ranking jurists, often with extended legal authority in the political sphere, such as Sayyid ‘Abd-Allāh Bihbihānī and Sayyid Muḥammad Ṭabāṭabā’ī.⁵² The tenacity of religion as a major force throughout the modern history of Iran has been remarkable, as high-ranking jurists have played an important role in political life of Shī‘i Iran, with their strong resistance to foreign economic and political influence, collaboration with Iranian liberals to serve the causes of justice and constitutionalism, thereby restraining monarchical absolutism in Iran.⁵³ In this type of non-institutionalized religious plurality the Shī‘a religious scholars typically participated in the political affairs of the country only on individual initiative, meaning that the *‘ulamā* included elements both in favor of participating in the political affairs of the country (e.g. Āyatallāh Abu ‘l-Qāsim Kāshānī, d. 1962) and those who preferred the more quietist path of teaching in religious schools without active political engagement (e.g. Āyatallāh ‘Abd al-Karīm Ḥā’irī, d. 1936 and Āyatallāh Āqā Ḥusain Burūjirdī, d. 1961). The latter was not only mainly responsible for teaching in Qum but also the supreme *marja’-i taqlīd*. However, the political circumstances in the Iran in the 1960s set religious scholars on a collision course with the governing authority, the Shāh, leading to the Islamic Revolution in 1979 and the institution of the guardianship of the jurist.⁵⁴

4. Emergence of another Authority: the Supreme Leader

Since the Islamic Revolution of 1979, the Iranian system of grand jurists has had to accommodate another authority: that of the guardian jurist called the “Supreme Leader.” The doctrine of the guardianship of the jurist forms the central axis of contemporary Shī‘a political thought, advocating a guardianship-based political system that relies on a just and capable jurist to assume leadership of the government during the Occultation of the infallible Imam.⁵⁵ The practical realization of supreme clerical authority is largely due to Āyatallāh Khomeinī’s work and practice, which revived the works of Mullā Aḥmad Narāqī (d. 1830). According to Narāqī, the *‘ulamā* were authorized with the Imam’s privilege, assuming the right to act as successor to the Imam and be vested with all his powers.⁵⁶ In 1944, Khomeinī wrote *Kashf al-Asrār* (“The Unveiling of Secrets”), whose political component not only attacked the policies of the Shāh, but also lists the first steps toward governance of the jurist: the monarchy would be provisional “as long as no better system can

⁵² *Ibid.*

⁵³ AVERY, P. et al. (1991) 732-764 note 6.

⁵⁴ *Ibid.*

⁵⁵ VAEZI (2004) note 25.

⁵⁶ MOUSSAVI, AHMED KAZEMI (1996) 273.

be established,” and the monarch should be chosen by an assembly of properly qualified jurists and adhere to Islamic law.⁵⁷

The theory of the guardianship of the jurist was concretized by Khomeinī in his book on the *Governance of the Jurist* (1970), which is a compendium of his thirteen speeches delivered during his stay in Najaf from 21 January to 8 February 1970.⁵⁸ Khomeinī’s intention in reviewing all the relevant texts in the Qur’ān and the prophetic tradition was to elucidate clearly the doctrine that religious scholars were the heirs to the political authority of the Twelve Imams. Khomeinī’s doctrine departs from multiplicity, as there is no hierarchy ranking one jurist higher than another or endowing one with more authority than another. The guardianship of the jurists during Greater Occultation is a general designation, which means that no jurist is exclusively appointed as supreme, and all Imami jurists who are just and qualified in Islamic jurisprudence have the right to exercise the Imam’s authority as his deputies.⁵⁹ Khomeinī himself became the first guardian jurist of the newly founded Islamic Republic with the doctrine of *vilāyat* crystallized in several articles of the new 1979 constitution.⁶⁰ Khomeinī was also *marja’-i taqlīd*.

It is fair to note that the transition of power from the religious to the political did not receive the unanimous support of the clerical institution.⁶¹ Among the most prominent critics of the new theory were various grand jurists, such as Sharī’at-madārī, Qummī, Khū’ī, and al-Sistānī. For instance, Āyatallāh Khū’ī (a *marja’-i taqlīd* established in Iraq) was of such authority that most Shī’a continued, in fact, to follow him regardless of the guardianship of the jurist.⁶² After having examined all the proofs and evidence normally advanced in favor of general *vilāya* (the jurisconsult’s authority over the people on general issues), Āyatallāh Khū’ī came to the conclusion that, during the Occultation, such *vilāya* cannot be established by reference to any proof; it is the exclusive right of the Prophet and the Imams.⁶³ Āyatallāh Khū’ī’s student, Āyatallāh al-Sistānī, who is currently considered to be the most distinguished jurist with a majority following among the Shī’a, agrees with Khū’ī’s view, but added a conditional clause in 2010: if a *faqīh* wants to possess *vilāya* in the state’s administration, he must secure the people’s general approval (*maqbuliyya ‘amma*).⁶⁴ Āyatallāh Khomeinī did not regard public allegiance as necessary for the grand jurist’s legitimacy, because in his view the jurists were the messianic Imam’s general deputies (*niyābat ‘amma*).⁶⁵

⁵⁷ KHUMAINĪ, RŪḤALLĀH (2009) 186.

⁵⁸ KHUMAINĪ, RŪḤALLĀH (2008).

⁵⁹ VAEZI (2004) note 25.

⁶⁰ PAPAN-MATIN, FIROZEEH (2013) 159 f.

⁶¹ ARJOMAND (1988b) 176 note 21.

⁶² WALBRIDGE (2001) 5 note 18.

⁶³ MAVANI, HAMID (2011) 811.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* 815.

Several distinctions prevail to separate the competing spheres of competence between the grand jurist and other jurists. As a grand jurist, Āyatallāh Khumeinī could issue a *fatwā*, a religious ruling deducing and indicating the Islamic injunctions from sources that apply to the case at hand. In matters unrelated to the government or administration of social affairs, the Āyatallāh's opinion binds only those who submitted to his religious authority.⁶⁶ Let it be noted that, due to the multiplicity of legal (*sharī'*) opinions by the jurists, such determination would not bind those who refer to *other* scholars as religious authorities. For instance, there are presently several religious scholars in Twelver Shī'ism who are grand *marāji'-i taqlīd* or who are qualified for *marja'yiat*. Hence, it is perfectly possible that some religious scholars could have determined the scope of Islamic law differently from Āyatallāh Khumeinī. Examples can be found, for instance, from divergent attitudes religious scholars expressed on the questionable permissibility of chemical weapons.⁶⁷ In the case of nuclear weapons, many scholars seem to have come out openly supporting the ruling jurist's view on the prohibition of such weapons in Islam.⁶⁸

The above cases have to be differentiated from a hypothetical situation in which the governing jurist's *fatwā* was intended to refer to the government and administration or related to the affairs of Muslims or Islam, which would be binding on all, even other jurists.⁶⁹ In fact, several grand jurists close to the government have stated as much explicitly. For instance, Āyatallāhs Makārīm Shīrāzī and Jawādī Āmolī have said that everyone, even the *mujtahids* and *marāji'-i taqlīd*, must obey the guardian jurist's decrees because the matter does not require rational proofs for its validity (*ta'abbudi*).⁷⁰ It is also worth mentioning that Āyatallāh Khumeinī himself introduced a revolutionary doctrine regarding the absolute authority of the jurist (*vilāyat-i muṭlaqa-i faqīh*). According to Vaezi, Āyatallāh Khumeinī was perhaps the first Imami jurist to explicitly and publicly discuss the connection between governmental orders (*ahkām hokūmatī*) and Islamic laws (*ahkām Shari'*). Normally, the jurist has no right to issue orders opposing obligatory first order laws or peripheral, second-order laws, even if Muslims' interests demand it.⁷¹ First order laws are central and public, like laws on the consumption of alcohol. Second order laws include, for example, personal devotional matters and labor laws, and they are imprecise and subject to interpretation and the doctrine of necessity.⁷² Āyatallāh Khumeinī departed clearly from this interpretation when he ruled that, although the implementation of Islamic law is very important, it is not the ultimate goal. For Āyatallāh Khumeinī, the Islamic state is Islam

⁶⁶ MOHADDES, MOHAMMAD, interview, International Institute for Islamic Studies (Qum), March 19, 2016.

⁶⁷ ZANDERS, JEAN-PASCAL (2001) 1 f; SAHIMI, MUHAMMAD (2010).

⁶⁸ ALIDOOST, ABOLGHASEM (2014).

⁶⁹ MOHADDES (2016) note 66.

⁷⁰ MAVANI (2011) 811 note 63.

⁷¹ TAMADONFAR, MEHRAN (2015) 36.

⁷² *Ibid.*

itself and, hence, Islamic laws' significance is overshadowed by the importance of protecting the Islamic system and the interests of Islam.⁷³ Khomeinī's interpretation amplified governmental primacy while simultaneously emphasizing the absolute authority of the guardian jurist who has the final say in all legal matters.

The demarcation of authority between the guardian jurist and the grand jurists has continued through the present Supreme Leader 'Alī Khamenei's time,⁷⁴ during which powers have been centralized in the person of the Supreme Leader.⁷⁵ The emphasis on the religious nature of the office of the Supreme Leader is unprecedented. According to Ansari, cultivating the Leader's charisma was a partial response to his relatively meager theological credentials.⁷⁶ To remedy this gap, Khamenei' was quickly promoted from a junior clergyman to Āyatallāh and Leader and, then, to Grand Āyatallāh to the amazement of several senior clergymen.⁷⁷ In addition, in Khamenei's thinking it was incorrect to have several *marāji'-i taqlīd* (seven at that time) but that only one person, the Supreme Leader, should be introduced as the unique and supreme *marja'-i taqlīd*.⁷⁸ Such ideas seem to contradict the Uṣūlī school of jurisprudence's traditional evaluation of superiority in learning as a criterion for the acceptance of religious authority. Also, such ideas contradict the attributes of informality and plurality typical to the Uṣūlī-school views on religious authority. In fact, several Grand Āyatallāhs protested Khamenei's plan for supreme *marja'yiat*. In November 1997, Āyatallāh Montazerī successfully contested the plan on the basis of two legal challenges: the requirement that the Leader be most learned in jurisprudence (which was lacking) and his lack of qualifications for *marja'yiat*.⁷⁹

To sum up, the development of authority, both religious and political, is an on-going process. As Iran's experiences in the 20th century evidence, centralization of power has not produced durable solutions.⁸⁰ Might a balance be found somewhere between absolutes? For instance, Khomeinī's earlier versions of the jurists' guardianship included the possibility of a council of governing grand jurists, instead of one Leader.⁸¹ At this point, it can be concluded that the plurality of authoritative interpreters of religious law continues as a distinctive characterization of the Twelver Shī'ī Uṣūlī school of jurisprudence.

⁷³ VAEZI (2004) note 25.

⁷⁴ KADIVAR, MOHSEN (2014).

⁷⁵ ANSARI, ALI (2013) 296.

⁷⁶ *Ibid.*

⁷⁷ KADIVAR (2014) note 74.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ ANSARI (2013) 297 note 75.

⁸¹ ARJOMAND (1988b) 176 note 21.

5. Conclusions

This article set out to identify the correct interlocutors in matters of Islamic law in Twelver Shī'ism, the state religion of Iran. There are two types of such interlocutors. The legal-historical narrative of the late 18th and early 19th century evidences the evolution of a specific hierarchy, on top of which are the authoritative interpreters of law: *marāji'-i taqlīd*. With the Islamic revolution in 1979 and the introduction of the guardianship of the jurist doctrine, grand jurists have had to accommodate another religious and political authority, that of the guardian jurist (Supreme Leader). This plurality of authority continues to the present day, although the present centralization of political and religious authority in the person of the Supreme Leader does pose some challenges to the traditional model of appointing authority. Nonetheless, religious plurality continues as the distinctive characteristic of the Twelver Shī'i school of jurisprudence in Iran and elsewhere. Any discourse on the interpretation of Islamic law is carried out with these religious authorities.

To end this discussion, it is useful to reiterate that superiority in learning and knowledge of Islamic law became the key criteria for the designation of religious authority under Uṣūlī school of jurisprudence. Such emphasis on knowledge is a very unique characteristic typical of Twelver Shī'ism. Underlying it is a long-term view of society in which learning is a constant, life-long process. Moreover, this will necessarily mean that knowledge is inherent in societal decision-making.

Today, this type of worldview is rare. An active dialogue with such grand authorities could serve as a useful reminder of the importance of knowledge and learning before any decision-making authority.

ACKNOWLEDGEMENTS

I would like to thank the Faculty of Law at the University of Helsinki for supporting my work. In particular, special thanks go to professors of legal history Jukka Kekkonen and Heikki Pihlajamäki, who have helped me understand the importance of legal-historical inquiry for any social analysis. I would also like to extend my sincere thanks to Nadine Göbel and the rest of the editorial team of the Max Planck Institute for European Legal History.

This work has been funded by the Finnish Academy of Science and Letters.

BIBLIOGRAPHY

- ABOUL-ENEIN, YOUSSEF, SHERIFA ZUHUR (2004), *Islamic Rulings on Warfare*, Carlisle: Strategic Studies Institute (US), retrieved on April 15, 2016 from: fas.org/man/eprint/Islamic.pdf
- AKHAVI, SHAHROUGH (1980), *Religion and Politics in Contemporary Iran. Clergy - State Relations in the Pahlavi Period*, Albany: State University of New York Press
- ALGAR, HAMID (1969), *Religion and State in Iran 1785-1906: the role of the Ulama in the Qajar period*, Berkeley: University of California Press
- ALIDOOST, ABOLGHASEM (2014), *Law and jurisprudence of production, stockpiling and application of unconventional warfare*, Iranian Institute for Political and International Studies, seminar paper, Tehran June 3, 2014
- AMANAT, ABBAS (1988), *In Between the Madrasa and the Marketplace: The Designation of Clerical Leadership in Modern Shi'ism*, in: ARJOMAND (1988) 98-132
- AMANAT, ABBAS (2003), *From ijtiḥād to wilāyat-I faqih: The Evolving of the Shi'ite Legal Authority to Political Power*, in: *Logos* 2.3 (Summer 2003)
- ANSARI, ALI M. (2013), *L'état, c'est moi: the paradox of sultanism and the question of 'regime change' in modern Iran*, in: *International Affairs* 89:2, 283-298
- ARJOMAND, SAID AMIR (ed.) (1988), *Authority and Political Culture in Shi'ism*, Albany: State of University of New York Press
- ARJOMAND, SAID AMIR (1988a), *Introduction: Shi'ism, Authority and Political Culture*, in: ARJOMAND (1988) 1-22
- ARJOMAND, SAID AMIR (1988b), *Ideological Revolution in Shi'ism*, in: ARJOMAND (1988) 178-209
- ARMS CONTROL ASSOCIATION (2014), *History of Official Proposals on the Iranian Nuclear Issue*, retrieved on March 3, 2016 from: www.armscontrol.org/factsheets/Iran_Nuclear_Proposals
- AVERY, JOHN SCALES, *Perpetual War*, in: *Human Wrongs Watch* 2012, retrieved on March 3, 2017 from human-wrongs-watch.net/2012/11/05/16209/
- AVERY, P. et al. (eds.) (1991), *The Cambridge History of Iran* 7, Cambridge: Cambridge University Press
- CRONE, PATRICIA, MARTIN HINDS (1986), *God's Caliph: Religious Authority in the First Centuries of Islam*, Cambridge: Cambridge University Press
- GAISER, ADAM R. (2010), *Muslims, Scholars, Soldiers*, Oxford: Oxford University Press
- GLEAVE, ROBERT (2007), *Conceptions of Authority in Iraqi Shi'ism. Baqir al-Hakim, Ha'iri and Sistani on Ijtihad, Taqlid and Marja'iyya*, in: *Theory, Culture & Society* 24, 2, 59-78
- GLEAVE, ROBERT (2014), *Muḥammad Bāqir al-Bihbihānī (d. 1205/1791)*, in: SPECTORSKY, SUSAN A., DAVID D. POWERS (eds.), *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss*, Leiden: Brill, 415-432

- HALLAQ, WAEL B. (2009), *Sharī'a. Theory, Practice, Transformations*, Cambridge: Cambridge University Press
- HAYWARD, JOEL (2012), *Warfare in the Qur'an*, Amman: The Royal Aal Al-Bayt Institute for Islamic Thought, retrieved on April 11, 2017 from: www.joelhayward.org/Hayward-Islam-Warfare-RISSC.pdf
- KADIVAR, MOHSEN (2014), *The Trivialization of Shi'i Marja'iyyat. Impeaching Iran's Supreme Leader on his Marja'iyyat* (Web-Book), retrieved October 10, 2016 from: en.kadivar.com/2014/03/25/the-trivialization-of-shii-marjaiyyat-impeaching-irans-supreme-leader-on-his-marjaiyyat/
- KHUMAINĪ, RŪḤALLĀH (2008), *Islamic Government: Governance of the Jurist*. Tehran: The Institute for Compilation and Publication of Imam Khomeini's Works
- KHUMAINĪ, RŪḤALLĀH (2009 reprinted), *Kasf al-Asrār*, Qum: Ketab Corporation
- KOHLBERG, ETAN (1988), *Imam and Community in the Pre-Ghayba Period*, in: ARJOMAND (1988) 25-53
- LAMBTON, ANN K.S. (1964), *A Reconsideration of the Position of the Marja' Al-Taqlid and the Religious Institution*, in: *Studia Islamica* 20, 115-135
- MAVANI, HAMID (2011), *Ayatullah Khomeini's Concept of Governance (wilayat al-faqih) and the Classical Shi'i Doctrine of Imamate*, in: *Middle Eastern Studies* 47:5, 807-824
- MOUSSAVI, AHMAD KAZEMI (1985), *The establishment of the Position of Marja'iyyat-I Taqlid in the Twelver-Shi'i Community*, in: *Iranian Studies* 18, 1, 35-51
- MOUSSAVI, AHMED KAZEMI (1996), *Religious Authority in Shi'ite Islam. From the Office of the Mufti to the Institution of Marja'*, Kuala Lumpur: International Institute of Islamic Thought and Civilization
- NEWMAN, ANDREW J. (1992), *The Nature of the Akhbārī/Ūṣūlī Dispute in Late Ṣafawid Iran. Part 1: 'Abdallāh al-Samāhijī's "Munyat al-Mumārīsīn"*, in: *Bulletin of the School of Oriental and African Studies* 55,1, 22-51
- PAPAN-MATIN, FIROZEEH (2013), *The Constitution of the Islamic Republic of Iran (1989 Edition)*, in: *Iranian Studies* 47,1, 159-200
- PERSPECTIVES ON THE IRAN NUCLEAR DEAL (2015), Taylor & Francis Group, retrieved on December 10th, 2015 from explore.tandfonline.com/page/pgas/irans-nuclear-deal
- SAHIMI, MUHAMMAD (2010), *The Political Evolution of Mousavi*, in: Tehran Bureau, February 16, 2010, retrieved December 12, 2016 from www.pbs.org/wgbh/pages/frontline/tehranbureau/2010/02/the-political-evolution-of-mousavi.html
- AL-SHAYKH AL-MUFĪD (1957), *Kitāb Al-Irshād. The Book of Guidance*, Qum: Ansariyan Publications
- TAMADONFAR, MEHRAN (2015), *Islamic Law and Governance in Contemporary Iran. Transcending Islam for Social, Economic, and Political Order*, London: Lexington Books
- ZANDERS, JEAN-PASCAL (2001), *Iranian Use of Chemical Weapons: A Critical Analysis of Past Allegations*, in: SIPRI Briefing Series 1-6

VAEZI, AHMED (2004), *Shia Political Thought*, London: Islamic Centre of England, retrieved on October 19th, 2015 from www.al-islam.org/shia-political-thought-ahmed-vaezi

WALBRIDGE, LINDA S. (2001), *Shi'ism and Authority*, in: WALBRIDGE, LINDA S. (ed.), *The Most Learned of the Shi'a. The Institution of the Marja' Taqlid*, New York: Oxford University Press 3-13