I. Introduction

The Islamic Revolution of Iran was not only an Islamic revolution in which Khumainî with his theory of wilāyah faqih played a leading role, but also a typical popular revolution in which the people overthrew the Pahlavi regime through their uprisings.

In this Revolution, an overwhelming majority of people supported Khumainî as their leader. Therefore, there was no serious contradiction between wilāyah faqih embodied in the personality of Khumainî and popular sovereignty expressed in the popular opinions. The new Constitution adopted after the Revolution incorporated both principles of wilāyah faqih and popular sovereignty without clarifying the relationship between the two(1). The issue of future succession to Khumainî made it necessary to theorize consistency between the position of wilāyah faqih and the popular will. Yet the issue of Verfassunggebende Gewalt (constitution-enacting power)(2) was not addressed, and the dualism was maintained. When the succession problem became a pressing one, however, it was sought to establish theoretical consistency between the position of wilāyah faqih and the popular will. For, “Der Dualismus dieser Verfassungen ist unhaltbar. Jeder echte Konflikt offenbart das einfache Entweder-Oder der einander ausschließenden politischen Formprinzipen(3).”

In the case of Khumainî, it was not the Constitution that gave him legitimacy as supreme leader. On the contrary, he himself was the Trager der Verfassunggebenden Gewalt. But it was not the case with his successor. The latter was supposed to derive his legitimacy as supreme leader from the Constitution.

In the present article, I will first clarify both the framework of the arguments and the points at hand and then, by focusing on Supreme Leader
Ayatullah Khâmene’î and President Hujjatulislâm Khâtami, try to outline the political thought of contemporary Iran around the issues of wilāyah faqîh, sovereignty, and Constitution.

2. The Classical Shi‘î Doctrine of Imâmah

The classical political theory of the Shi‘ah, that is the doctrine of Imâmah, is a variety of the doctrine of divine-right kingship. The Imâm is an infallible superhuman being who is appointed by God as proof of His Benevolence to mankind and for the purpose of guiding the community of believers in the right path. The obligation of appointing the Imâm is not on the humans, but on God. The Imâm is appointed (mansûb) directly by God through a divine nomination(nass). Therefore, the authority of the Imâm stems directly from God.

The structure of the Shi‘î political theory becomes clearer if compared against its Sunni counterpart. According to the Shi‘ah, the Imâm, like the Prophet, is infallible and appointed by God. According to the Sunnis, by contrast, a khalîfah is an ordinary human being and is not free from making mistakes. He is elected by the ummah, although the office of khalîfah itself is prescribed by God. In short, the Shi‘î Imâmah is inseparable from the person of the Imâm, while in the Sunni khalîfah the person and the office are conceptually separated.

Shi‘î political thought is so idealistic that it distinguishes the efficiency of the rule from its legitimacy, and makes political authority a purely normative-ideal concept. By contrast, the Sunnis accept the legitimacy of the conqueror (mutaghallib). This idealistic tendency can also be found in the wilâyah faqîh theory as well. It is, therefore, stated that wilâyah faqîh is not an external fact that exists objectively in the outside world, but exists only inside the recognition of a person who admits its validity (maujûdiyat-i ān-hâ mahdûd bih āhuzah-yi i’tibâr-i mu’tabir ast)(4).

3. The Theory of Divine Nomination of Wâlî Fąqîh

In his book Wilâyat Fąqîh, Khumainî quoted various hadîths to prove that the Imâms delegated wilâyah to the faqîh. But he did not pay any attention to the concept of sovereignty in its Western sense(5).

On the other hand, it is quite certain that Khumainî recognized the role of
the people in the process of the Revolution when he said, I will determine the form of government with the support of this nation (bā poshtibānī-yi in millat daulat ta'īn mi-konam)(6). But Khumainī did not theorize the position of the people in his wilāyah faqīh theory, and there is an ambiguity in his speeches that is susceptible to various interpretations(7).

In the Islamic Republic regime, there are some jurists who advocate the position, relying on Khumainī’s wilāyah faqīh theory, that the authority of the Wali Faqīh (Jurist Ruler) is a direct extension of that of the Imām. According to this theory, the Wali Faqīh, like the Imām, is directly appointed by God. In consequence, his authority also stems directly from God. Many senior Iranian fuqahā’, such as the late Mutahhari, Jawādī-Āmulī, Mahdavī-Kanī, Ḥabīb Allāh Ṭāhirī, Miṣbāḥ al-Yazdī, and Asad Allāh Bayāt support this position(8).

For example, Jawādī-Āmulī states: In the opinion of the Shi‘īs, bai‘ah (oath of allegiance) has only a function of discovery (kāshifī yat). The Assembly of Experts is tasked to judge whether or not a certain qualified faqīh is divinely appointed and [if appropriate] dismissed. And its judgment is in no way the cause of his appointment or dismissal (na sabāb-i naṣb ya mūjib-i’azl). The leader of Islam is neither appointed nor dismissed by the people (mansūb ya ma’zūl nami-gardad)(9). That is, the election of a certain faqīh by the people is only the discovery of him and the ceremony of an oath of allegiance to him. The sole ground of his legitimacy is his divine appointment. His election by the people is nothing but an expression or manifestation of this divine appointment. It adds nothing to the legitimacy of his authority.

4. The Theory of Popular Sovereignty

An opposing position restricts the divine appointment to the Imāms. During the ghaibah (occultation of the Imām), so goes the position, the ummah or the people have sovereignty and a qualified faqīh becomes Wali Faqīh only by popular election. The Wali Faqīh derives his legitimacy from his election by the people.

It is Muntazirī who formulated an eclectic theory of the popular sovereignty during the ghaibah. Fully conscious of Western political theory, Muntazirī states in the First Section of Chapter Five of his book Studies on wilāyah faqīh and the Law of the Islamic State: The Truth lies in a sequential combination of the both [the theories of sovereignty of Allah and popular
sovereignty]. Although in the case of the Prophet and the twelve Imâms, according to our belief, one becomes Imâm with divine nomination — and the Imâmah cannot be conceded to anyone else — in other cases, the Ummah has the right to election. It does not mean, however, that they can elect whomever they want. Rather, [the election must be from] only among those qualified persons who satisfy certain conditions. As will be mentioned in the following, wilâyah faqîh is one of the latter cases. The Imâmah is concluded in itself (bidhât) and first by divine nomination, and then by the election of the ummah — in one phase or some more(10).

According to Muntazirî, the ad thes cited by Khumainî refer not to the general nomination of faqîh, but only to the definition of the qualifications of the ruler(11). The ummah sovereignty theory of Muntazirî was first developed by Sâlihi-Najafâbâdi. Many articles have already been written about the popular sovereignty theories in contemporary Iran(12).

5. Khâmene‘î’s Theory of Popular Government

Against this background, it is Khâmene‘î who has added some democratic elements into the divine nomination theory and completed the development of Shi‘î political theory. Calling the Islamic government the Governments of the Prophet, ‘Alî, and the Islamic Republic of Iran, Khâmene‘î emphasizes that the Islamic Government is a popular government (hukumat-i mardom) in the following both senses: (1) the government for the people and (2) the government by the people(13).

He states: In Islamic society, the ruler(hâkim) is elected (intikhâb mishavâd) by the people in accordance with their belief. In the early times of Islam, every elected ruler received trust(îmân) from all the people, as was the case with the Prophet(14). The Islamic Government is both a popular government and a divine government. Its first examples [are found] in the early times of Islam in the period of the Most Noble Apostle and his successors. Its second example is the Islamic Republic of Iran which is the government loved by the people, government [based on] the opinions of the people, government elected by the people, and government composed of various elements of the people(15).

After reiterating the Shi‘î doctrine of divine right kingship which denies any role of the people in the nomination of the Prophet and the Imâms,
Khamene’i — like Muntaziri — restricts divine nomination to the cases of the Prophet and the Imams. Khamene’i then declares: Since there is no divine nomination in the times of ghaibah, popular election is a necessary condition for the political authority of the Wali Faqih.\(^{(16)}\)

He states: At the time when there is nobody elected by God as ruler of the society after the era of the infallible Imams, the necessary conditions, or pillars, for a ruler are the following two. The first is being possessed of those qualifications of a ruler which Islam requires. The second is the people’s recognition and acceptance of him. If the people do not recognize the person who is fully qualified for being ruler, or if they do not approve his government, he could not be ruler. Therefore, the approval and acceptance of the Ummah is one of the [necessary] conditions of the ruler \(\text{Rukn-i dovom qabūl wa padḥiresh-i mardom ast. Agar mardom an hākim wa shakhşi rā keh dāray-i milāk-hā-i hukūmat ast, na shenākhtand wa beh ḥukūmat na padhīraftand, ū hākim nīst. Pas qabūl wa padhiresh-i mardom shart dar ḥākimīyat ast)}^{(17)}\).

It may be concluded, therefore, that among the senior jurists in Iran a majority of whom support the divine nomination theory of the Faqīh, Khamene’i stands relatively closer to the popular sovereignty camp.

6. The Theoretical Contribution of Khamene’i

The originality of the Khamene’i theory, however, lies in the following. First, he has separated the legitimacy of the rule of a certain Wali Faqih from that of the Islamic Government, or the wilayah faqih regime, itself. This has enabled him to confine the role of the people to the dimension of the external fact, removing it from the normative idea of the Islamic Government based on the normative-ideal \(i’tibari\) conception of wilāyah. Here it becomes clear that his conception of popular government is founded not on a social contract in its western sense of the term, but on a sovereign-subject contract.

He states: it can be said that the people play a role in the selection of the Islamic regime because the government cannot be formed without the approval of the people. We do not, however, characterize it as a real condition. For, even if the people do not approve of an Islamic regime, the Islamic government itself would never be void from the standpoint of the norm. Rather, [it would be void] only as a matter of fact \(\text{mi-tavān goft keh mardom dar ast-i tā’īn-i nizām-i Islāmī ham dārāy-i naqsh hastand, tā mardom na-khāhānd ḥukūmat shakl nami-}\)
Elsewhere he has also stated: wilyāh faqīh in the guidance of society and the administration of social affairs in any era belongs to the main poles of the orthodox doctrine of the Twelve Shi‘ah and its source is found in the principle of the Imāmah(19).

Thus legitimacy of regime of wilyāh faqīh is independent of approval of the people as the case of the sovereign-subject contract theory contrary to the social contract theory. In his opinion, its legitimacy is established by ‘aql which is one of the 4 sources of Shi‘ī jurisprudence, so it is not necessary to be supported by textual evidence of divine nomination.

He states: We need not textual evidence(dalil naqli) in order to establish the wilayah faqih, i.e., the government of faqih, in Islamic society, ---- reason('aql) and rational consideration(i‘tibār ‘aql) is the proof(dilalah) and enough (kifā yah)(20).

As this statement clearly shows it, Khāmene‘ī considers that the system of wilayah faqih to be an extension of the Imāmah of the infallible Imāms. Now the important points that Khāmene‘ī has made in these statements are the following: Just as the Imam who is appointed by God possesses his intrinsic-normative (i‘tibāri) wilayah with or without the approval of the people, the system of wilayah faqih has its normative legitimacy regardless of popular support. This is the case while a certain faqih has no intrinsic and normative(de jure) wilayah of himself. Namely, his wilayah is contingent and de fact, because it depends on people’s acceptance.

He thus states: the regime of wilayah faqih (nizām-i wilāyat-i faqīh) is ruling (ḥākim) over the Constitution of our Islamic Republic and every aspect (shakl-i kulli) of our society(21).

In short, Khāmene‘ī has successfully integrated the will of the people into the theory of wilayah faqih by separating the legitimacy of the personality of the ruler from that of the Islamic regime and denying any wilayah to a faqih lacking popular approval and acceptance, while affirming that the legitimacy of the wilayah-faqih-based Islamic regime is intact regardless of whether the people approve of it or not.

The second theoretical contribution that Khāmene‘ī has made with regard to the Shi‘ī political theory lies in his analytical distinction between the rulership
from the *Imāmah*. According to him, the political authority of ‘Alī during the
time he was in power stemmed not from his infallibility of being divinely
nominated *Imām*, but from the sovereign-subject contract grounded on the
people's approval of him.

*Khāmene‘ī* quotes ‘Alī as saying: O People, I have rights over you and you
have rights over me. Your rights over me are my sincerity toward you, my
generous distribution of *fai* (booty without any real battle) among you, and my
guidance for you so that you may learn. As for my rights over you, they are
your sincerity toward me in my presence as well as in my absence, your answer
to my call, and your obedience to my order(22).

On the basis of this tradition, *Khāmene‘ī* makes analytical distinction
between rulership and the *Imāmah*. He states: It is evident that we cannot say
that the people must be obedient to ‘Alī bn Abī Ṭālib because he is infallible
*Imām*. If the point at issue is the infallible *Imāmah* of ‘Alī, it would not be
limited to the period of his reign. [Here] ‘Alī bn Abī Ṭālib is speaking as a ruler,
and not as the *Imām* to whom all the Muslims must be obedient regardless of
whether they accept him or not, regardless of whether he is head of the
government or not (yaqīnān dar in namī-tavān iddi‘ā kārd keh īn wājīb al-itā
‘ah būdān beh khatīr-i imāmat-i ma‘šūm-i ‘Alī bn Abī Ṭālib ast, barāy-i khatīr īn
keh āgar mas ‘alāh imamāt-i ma‘šūm-i ‘Alī bn Abī Ṭālib bāshad, makhsūs-i
daurān-i ḡukūmat-i ān īst. ‘Alī bn Abī Ṭālib beh-‘unwān-i yak ḡakīm harf mi-
zanad, nah beh-‘unwān-i yak imām-i ma‘šūm). [Rather] it is the specialty of the
Islamic ruler that makes the people obliged to obey him when he wants
something from them(23).

In this way, *Khāmene‘ī* makes the *Imāmah* a concept with two-tiered
structure: On the one hand, it is the religious-dogmatic authority uniquely
based on the divine nomination and the infallibility. On the other, it is the
political authority accorded by the people through a contract. In consequence,
he has been able to make the concept of the Islamic government a two-tiered one
as well. On one layer, it is the system of *wilāyah faqīh* which represents a
normative-dogmatical leadership of the *Imāmah* and reflects the legitimacy of
divine sovereignty. On another layer, it is the rulership of a certain *faqīh* with
the approval of the people, which gives him the legitimacy as the ruler appointed
through a contract. In so doing, *Khāmene‘ī* has succeeded in theoretical
reconciliation between the traditional *Shī‘ī Imāmah* and the role of the people in
the Islamic Republic.
One of the implications of this theoretical innovation may be that with his theory, Khamene’i might have bestowed the Islamic Republic of Iran with legitimacy in the eyes of not only the Sh’i’ahs but also those non-Sh’i’ah citizens who do not accept the Shi’i Imamah. For, the separation of authority between dogmatical and political may enable the latter to accept the political authority of the Islamic Republic on the basis of a codified government contract.

7. Khâtami’s Democratic Interpretation of Wilâyah Faqîh

Khâtami considers the issue differently by referring to the Constitution as a third element of the legitimacy of the regime. In the opening speech at the Congress of the Renaissance of Religious Thought of Imâm Khumainî held in 1998, Khâtami stated as follows: The Assembly of Experts which the people select, in its turn, the Walî Faqîh (Leader). Therefore, the Leader is selected by the people. On the basis of this, his authority stems from the Constitution (wilâyah-hu min al-dustûr), and he is neither above nor out of the Constitution (laisa fauqa-hu wa la khârija-hu). (24)

He also stated in his interview with the Lebanese magazine al-Muntalaq: That a heathen comes to power contradicts the Constitution [of the Islamic Republic of Iran]. However, if the people amend the Constitution and approve the heathen’s coming to a decision-making position, it is another issue. If we are satisfied with democracy truly and sincerely, we will consider whatever people desire legitimate (sharî’î) on the level of political authority (mustawâ al-sultah). In such circumstances, we cannot tell them that they should obey the Islamic government permanently. We cannot force it on the people if they reject. This is what is incumbent on us when we are satisfied with democracy (25).

In the opening speech at the International Congress of the Elucidation of the Islamic Revolution held in 1999, Khâtami stated: Islamic Republic of Iran is the greatest achievement of Imâm [Khumainî] and it is based on the Constitution. The greatest mission of the Revolution today is to do our best to make this regime customary in the framework of this Constitution (barây-i nahadînah-i shodan-i în niçâm dar chârchûb-i qanûn-i asâsî). Wilâyah Imâm is not the wilâyah of administration (qaimûmah), but it is the wilâyah of education. For the wilâyah is the wilâyah of emulation (iqtidâ’ı). You have a good example in the Apostle of Allah and the wilâyah is the wilâyah of service (khidmah), not of rule (taḥakkum) or sovereignty (siyâdah).
Here Khatami differentiates the wilayah of Khumaini from that of Khâmene'i. He has put the latter under the Constitution — because he has been indirectly selected by the people based on the articles in the Constitution — while he juxtaposes Khumaini's authority with that of the Constitution.

Khatami is a self-assured democrat who states that we consider whatever the people desire legitimate albeit only with regard to political in its narrow sense. For he adds prudently, “on the level of political authority.”

Khatami seemingly acknowledges the tacit transition of Verfassunggebende Gewalt (Constitution-enacting power) from the Wali Faqih to the people in the process of rutinization of the Revolution. He is thus making efforts to re-popularize wilâyah faqîh by re-interpreting the wilâyah of the Imam as that of pastorship.

8. Conclusion

I have shown in the above that the position of the Supreme Leader Khâmene'i is close to the democratic camp as compared to the other senior fuqahâ’ who advocate the divine nomination theory of wilâyah faqîh and that President Khatami goes much further in becoming a democrat. It must be recognized, however, that their mission is one and the same, that is, to defend the regime of wilâyah faqîh in this crucial period of transition of Verfassunggebende Gewalt.

For this purpose, Khâmene'i manages to justify the legitimacy of the wilâyah faqîh regime on the theoretical level without recourse to the divine nomination theory and not to the approval of the people. The wilâyah faqîh is purely a normative-ideal concept and the legitimacy of its regime is proved by ʻaql (reason). He has achieved this with conceptual differentiation between the personality of a certain Wali Faqîh and the regime of wilâyah faqîh and by distinguish the legitimacy of the wilâyah faqîh regime from the validity of a government of a certain Wali Faqîh which depends on the approval of the people.

For his part, Khâmene'i tries at the level of real politics to secure from the people the actual approval of the regime of wilâyah faqîh by presenting it as the one of pastoral character in an effort to cultivate the people’s respect and love for it. He does so in the hope of getting at least the most essential core of wilâyah faqîh accepted by the people.
The above analysis makes it clear that the positions of Khâmene‘î and Khâtami are complementary rather than opposing to each other.

Notes
(1) Contemporary commentaries on the Constitution of the Islamic Republic of Iran give no satisfactory theoretical explanation on this issue, either. cf., Ja‘fari Bâshahr, Huqûq-i Asâsi (Tehran, 1375 [h.sh.]), Muhammad Hûsain Irânmanash, Sharâiculosâsî-i Asâsî-yi Jumhûry-yi Islâmî-yi Irân (Tehran, 1378 [h.sh.]), Qâsim Sha’bânî, Huqûq-i Asâsi (Tehran, 1377 [h.sh.]).
(2) Verfassunggebende Gewalt ist der politische wille, dessen Macht oder Autoritat imstande ist, die konkrete Gesamtentscheidung über Art und Form der eigenen politischen Existenz zu treffen, also die Existenz der politischer Einheit im ganzen zo bestimmen. Carl Schmitt, Verfassungslehre (Berlin: Duncker & Humbolt, 1993), p. 76.
(3) Ibid., p. 53.
(4) Āyah Allâh Jawâdî-Āmûlî, Wilâyat-i Faqîh wa Rahbâr dar Islâm (Tehran, 1368 [h.sh.]), pp. 95-97.
(5) He only talks about sovereignty of Islamic law (ḥâkimiyat-e qânûn-i Islâmî).
(7) For example, Mahdâvi Kânî say as follows: There is no doubt that Imam Khumaini depended on the opinion of the nation, support of the people(mardom). But what kind of people are they? They are the people who approve Islam with all their heart and mind and a majority of whom belong to Shî‘ah, the party of His Eminency ‘Alî (peace upon him) and who approve the wilâyah of the infallible Imâms and the deputyship (niyâbat) of qualified Fuqahâ (Ibid., p. 5).
(9) Jawâdî-Āmûlî, op. cit., p. 19.
(11) Ibid., p. 489.
(14) Ibid., p. 32.
(15) Ibid., p. 33.
(16) Ibid., p. 53.
(17) Ibid., p. 53.
(18) Ibid., p. 54.
(20) Ĥukûmat dar Islâm, p. 23.
(21) Ibid., p. 22.
(23) ِHukumat dar Islâm, pp. 64-65.