



ABSTRACTS

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● **Manifestaion of Absolute Guardianship of Jurist (*Wilayat al-Faqih*)
in the Practical Lifestyle of Ākhund Khorāsāni**
□ by **Muhammad Sādiq Mazināni**

Ākhund Khorāsāni is one of the religious scholars who believes in absolute guardianship of Muslim jurist during the Occultation (*Ghaybah*) period. Recently, some writers have tried with a political motive to make a contrast between Ākhund Khorāsāni's view and that of Imam Khomeini, assuming that Ākhund Khorāsāni denies the idea of guardianship of jurist.

The present essay confirms, through the evidence provided by the author, that Ākhund Khorāsāni's has a strong and deep belief in the absolute authority of guardian jurist and answers are given to the doubts raised in this respect. This paper tries to shed light on Ākhund Khorāsāni's practical lifestyle by underlining the difference between a governmental judgment and a legal injunction, judicial judgment and enjoining good and forbidding evil and the status and dignity of faqih. He issued a lot of judgments by authority (*ahkām walā'i*) in various political, social and cultural aspects. Such judgments like the necessity of supporting Āyatollāh Lāri on the basis of Umar ibn Handhala's accepted opinion, the judgement on dismissing Taqizadeh from National

Consultative Assembly (Majlis Shurā-ye Melli) and banishing him from the country, the judgment of toppling Muhammad Ali Shah's government and declaring that it is unlawful to pay tax to his despotic government, the judgment of establishing a new parliament, the order of amnesty etc.; all indicate that Ākhund Khorāsāni not only believed in absolute guardianship of jurist but also put it into practice.

In addition to Ākhund, other religious scholars approved his judgments and considered following them as obligatory and ignoring them as unlawful as ignoring the commands of Imam Mahdi.

Key words:

guardianship, vicegerency, absolute guardianship of jurist, legal injunction, judicial judgment, judgment by religious authority (*hukm walā'i*), constitutioned judgment.



● **The Theory of “the Discretionary Sphere of the Law”; a Legislative Origin of Governmental Decisions**

□ by Zabihollah Na'imiyan

Martyre Seyyed Muhammad Baqir al-Ṣadr's has used the so-called idea of “the discretionary sphere of the Law” or “*manatiq al-faragh*” in such a way that it has brought about misunderstandings, misinterpretations, and sometimes misuses in the area of the prerogatives of the guardianjurist. The central question of this paper is: what is the relationship between the mentioned theory and governmental decisions -- which represent a true image of the guardian jurist's prerogatives?

In Martyre Ṣadr's account about this theory, the special prerogatives of the guardian jurist and Islamic government concerning non-obligatory decisions have been of special interest. But this idea does not necessarily mean that the divine injunctions, in as far as the contexts of legislation and affirmation are concerned, contradict legislation.

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Therefore, the guardian's prerogatives which are given special attention when discussing the idea of the discretionary sphere of the Law, cannot be considered as of a turning away from Islamic thought and acquisition of divine injunctions about everything, because the prerogatives of a Muslim ruler concerning issuing governmental decisions are not limited to no non-obligatory legal (shar'i) injunctions; rather the guardian jurist can, according to a certain framework, issue governmental decisions in this domain.

Key words:

"*manatiq al-faragh*" (the discretionary sphere of the law), governmental decision, fixed judgments, changing judgments, something based on a divine text.



● **A Critique of the Doctrine of "Natural Law" from Early Christianity to Late Mediaeval Ages**

□ **by Muhammad Husayn Tālibi**

Due to the fact that there exist no record of discussions about the foundations of natural law in the works of Muslim thinkers and in order to develop a theory and do research about the foundations of natural law in Islam, it is necessary to make a thorough study about the doctrine of natural law in the western world, especially in the Christian era, in which great attention was given to religious criteria.

The doctrine of natural law underwent some changes in the west during the history of Christianity, and the course of these changes can be classified into six main periods.

The present paper starts with a critical study of the mentioned doctrine in the first two early periods of Christianity i.e. the period of Church Fathers and Mediaeval Ages, where thirteen critical observations are stated and explained under common and special headings.

These comments are explored in the light of the intellectual foundations of Islamic thought.

The first set of common criticisms is directed to all the thinkers of the two early periods of Christianity with regard to the question of natural law. The second set is comments and propositions which are separately related to the intellectual content of each of them regarding this issue.

Key words:

natural law, criticism of natural law, Fathers of the early Church, Mediaveal Ages, Agustin, (Saint Thomas) Aquinas.



● **An Inquiry into the Islamic Perspective of the Essence of Theocracy in the Western Political Thought**

□ by **Muhammad Riḍā Karimi Wālā**

According to the western political thought, theocracy is a metaphysical thing, and as opposed to democracy, it has an air of disregard for people. It is also assumed that theocracy is a system in which people have to carry out duties incumbent on them without being allowed to determine their political future, and the affairs are run by only particular group who are regarded as representative of God and none other than this group can communicate with Him.

This paper seeks to review the essence of theocracy in the western political thought and prove that the western assumption about theocracy is invalid and influenced by the authorities of the pre-Christian period and early Christianity, a period in which the authorities regarded themselves related in a certain way to God and metaphysics, relying on such ideas like divine nature, divine representation and divine will. The western assumption stands groundless before the solid evidence and argument introduced by Islam which confirms that there is no such a deterministic state of affairs. The author of this article recommends that the authentic

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religious resources which have dealt with this idea be studied closely.

Key words:

theocracy, divine nature, divine representation, divine will, divine vicegerency.



● Pathology of Government Officials' Behavior from the Viewpoint of Islam

□ by Mas'ud Ra'i and Muhammad Fallāh Slukolāyi

The main concern in the civic relations is ruler's transgression and his encroachment on civic rights. This concern appears, in some cases, so great that it can contribute to developing a hard rough encounter between the ruler and citizens. Behind this conflict there are a number of causes which have to be taken into account.

Islamic legal school has attributed a number of behavioral weaknesses to rulers and government officials.

These weaknesses can be dealt with under two categories: governmental morality and personal morality. Taking a religio-educational approach and reforming vulnerable areas, one can prevent from and overcome the weaknesses.

The unique feature of legal and political school in Islam is that, because it is concerned about the aims of man's perfection and ruler's perfection in particular, it gives due attention to the mentioned weaknesses.

Therefore, the proposed solutions of this school are founded more on inward mechanisms, piety and the notion that the universe is under God's supervision than on external and outward supervisory mechanism which is a top-down one.

Key words:

pathology, government officials, behavior, governmental moral harms, personal moral harms.



● **Restraining power in the Constitutional Law of the Islamic Republic of Iran**

□ **by Murtadā Ilyāsi**

Restraining power is one of the most important issues of common law. Montesquieu, who points to the perversity resulting from power in his explanation of the theoretical principles of separation of powers, states that power has to be restrained through separation of powers, but experience has proved that restraining power through separation of powers is not successful.

The Constitution of the Islamic Republic of Iran introduces an Islamic example of restraining power different from that adopted by other systems. This is ascribed to the following:

1- The system is an Islamic Republic -- that replaced Shah's regime -- in which the people are given the opportunity to play a significant role, and, due to its adherence to Islamic standards, it is safe and secure from taking the dangerous wrong path of the governors who pursue selfish desires and lack legislative and executive knowledge.

2- Independence of governing powers, specifying the functions and authorities of each of them, maintaining balance of powers and the controls exercised by the leader who enjoys all the requirements; all contribute to preventing the possibility of misusing authority, and

3- Giving special attention to the special moral and spiritual faculties of the governing body is an effective lever of spiritual restraint of power.

Key words:

restraining power, control, separation of powers, the control exercised by the leader, independence of powers.



● **Fiqhi and Usuli Foundations of the Expediency Council**

□ **by Muhammad Rahmāni**

According to the Constitution of the Islamic Republic of Iran, the main duties of the Expediency Council are:

- 1- Resolving the complicated problems of Islamic government (as in the Constitution of the Islamic Republic of Iran –Chapter viii, Article: 110,).
- 2- Solving the problems and making a decision when the laws passed by the parliament do not correspond to the views of the Guardians Council (as in the aforementioned Constitution-Article: 112).

Islam considers the adherence of fiqhi and usuli foundations to the divine precepts of interests and mischiefs as something approved by intellect and Shari'ah. Accordingly, the divine precepts have been decreed on the basis of real interests and mischiefs.

Due to the importance and great effect of this issue, we need to refer to the principle of adherence of precepts to interests and mischiefs according to the various perspectives of Shi'ah and Sunni scholars such as Ash'ari and Mu'tazili and authorities like Sheikh Anṣari, Ākhund Khorāsāni and Martyre Ṣadr. This can help form a clear idea about the status and key role of this principle in the inference of rulings by the authorities on Divine law and about its great effect and efficiency in performing the duties entrusted to the Expediency Council.

Key words:

interest, mischief, primary law, secondary law, governmental law, the Expediency Council.

