

Ḥisba and Maṣlaḥa as Political Thought: Fadlallah and
Khomeini Compared



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Abstract

This dissertation explores how ethical and political concepts inform and bolster theories of sovereignty in modern Islamic political thought. Commanding right and forbidding wrong, as an ethical-social concept, and *maṣlaḥa*, as a political concept, are intimately connected in Muslim formulations of state and good governance in the modern period. In other words, when mobilised together, the two constitute a comprehensive claim to sovereignty; where commanding right and forbidding wrong addresses social ethics related to sound public and private conduct, *maṣlaḥa* is used for legal decisions and national interest. Placing Ayatullah Muḥammad Ḥusayn Faḍlallah (d. 2010) in conversation with Ayatullah Rūḥallah Mūsavī Khumaynī (d. 1989) demonstrates most clearly the spectrum of debate on these concepts as they relate to sovereignty in Shi‘i political thought. On the one hand, Fadlallah developed his ideas on sovereignty primarily within the precarious political environment during and after Lebanon’s Civil War, when a strong centralised state was absent, and in which he promoted a politically integrous and ethically just community. Khomeini, on the other hand, wrote from within a centralised and secular monarchy, and subsequently from exile, to promote an Islamic state with juridical rule. This work examines how both scholars linked commanding right and forbidding wrong with *maṣlaḥa* to themes of law, the public-private spheres, gender, and state. Doing so, I demonstrate how and why these two concepts are appealing for contemporary Islamic politics and in which ways they are effective weapons for politics and sovereign claims.

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Note on Conventions

Arabic and Persian transliterations follow *International Journal of Middle Eastern Studies* standards. Unless standardised in English, Arabic and Persian terms have been transliterated. Additionally, Khomeini's written work, *Guardianship of the Jurist*, has been transliterated as *Vilāyat-i faqīh* using Persian transliteration while the general political concept, *wilāyat al-faqīh*, has been transliterated using Arabic transliteration.

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Needless to say, all errors are my own.

Introduction

After over a decade in exile, first in Turkey, then in Iraq, and finally in France, Ayatullah Rūḥallah Mūsavī Khumaynī (henceforth referred to as Khomeini; d. 1989) on 25 October 1978 gave a speech from Neauphle-le-Château to a group of Iranian students. He gave this speech less than two months after the “Black Friday” massacre in which the shah’s soldiers opened fire on demonstrators in Tehran and weeks before Ashura, the commemoration of Imām Ḥusayn’s (d. 680) martyrdom at the hands of the Umayyid Sultan Yazīd. In his speech, Khomeini promoted a vision of violent ethics, obligating young Iranians to overthrow the second and final Pahlavi monarch, Muḥammad Rizā Pahlavī Shāh (r. 1941-1979; d. 1980), with revolutionary self-sacrifice:

The tyrannical sultan [Yazīd] said that he was Muslim, but Yazīd was the kind of Muslim that the shah is... Now, we too must confront [the shah] with whatever it takes. We must forbid him to do wrong and command him to do right, and we are to pull him down from this redundant throne. Hence, we are not concerned about sacrificing our lives; let us sacrifice them. This is clearly something that we must do.¹

Although this was not the first time Khomeini called for revolution or the shah’s overthrow, this was the first time he defined commanding right and forbidding wrong (*amr bih ma ‘rūf va nahī az munkar*; *al-amr bi-l-ma ‘rūf wa-l-nahī ‘an al-munkar* in Arabic), also known as *ḥisba*,² as a collective obligation to perform

¹ Rūḥallah Khumaynī, *Ṣaḥīfa-yi Imām* vol. 4 (Tehran: Mu’assasa-yi tanzīm va nashr-i āṣār-i Imām Khumaynī, N.d.), 151.

² Examples include Q.3:104, 3:110, 7:157, and 9:71; Knut Vikør defines *ḥisba* as “(1) the ruler’s duty to ‘command the good’ (cf. *amr bi-l-ma ‘rūf*); (2) an individual’s right to try a case on behalf of a collective; (3) *siyāsa* court for the ‘public sphere’, in particular market-related matters.” Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (London: Hurst & Co., 2005), 352. In other words, *ḥisba* is the ruler’s duty to ensure accountability (hence, *ḥisba*). This most clearly involves commanding right and forbidding wrong, a concept which is also the duty of every

violence. In his *Tahrīr al-wasīla* (*Annotation of the Wasīla*) written nearly a decade earlier, he had defined the duty as a tool for communal and personal reform, disallowing its performance if harm might come to life, honour, progeny, or property. The exception, he adds enigmatically, is in “important cases.”³ But instead of deploying the duty to command and forbid in order to encourage societal reform with mostly non-violent methods—as he and his many predecessors had previously done—he circumvented tradition in his speech to formulate a new language of ethics and politics.

Prior to Khomeini’s speech, a Shi‘i was to sacrifice his/her life, progeny, or property when commanding and forbidding only if the highest temporal authority—the imam—sanctioned it. This condition was historically labelled *ahammiyya* (relative importance). Sanctioning this type of harm in order to change his community’s political condition, Khomeini united social ethics and state-centred politics. But more than just a revolution against tyranny, this speech also represented an intellectual and ethical revolution.

On the one hand, Khomeini shifted the parameters of debate on ethics and politics by uniting them in places where they were not united before. On the other hand, he also circumvented a large corpus and tradition of jurisprudence (*fiqh*) and scholarship on the principle of commanding and forbidding. But what allowed Khomeini, as a jurist who attained the highest level of scholarship, to circumvent such a tradition?

Muslim. For more, see current work, Introduction, subsection: *What is Commanding Right and Forbidding Wrong?*

³ Rūḥallah Khumaynī, *Tahrīr al-wasīla* vol. 1 (Qom: Dār al-kutub al-‘ilmiyya, 1970), 472.

Officially published in 1970, Khomeini's *Vilāyat-i faqīh va ḥukūmat-i islāmī* (*Guardianship of the Jurist and Islamic Government*) was based on a series of lectures he gave in Najaf, Iraq in 1965, early in his exile. Khomeini's famous treatise on sovereignty is best known for promoting the *fuqahā*'s (jurists) supreme rulership and their duty to establish an Islamic state. But it also laid the groundwork for the very concept that would eventually allow Khomeini to decide which of the *sharī'a*'s aspects he might decide to circumvent or implement. "Islam has come to give order to society," Khomeini wrote. "Imamate authority and government is for the regulation of the community." He added, "we are required to protect Islam. This task is an important duty; it is even more obligatory than Friday prayer and fasting..."⁴

Khomeini did not explicitly label the tool he used to subordinate the above pillars of Islam—such as prayer or fasting during Ramadan—to national interest. He did, however, excavate a concept that was until this moment a feature primarily of Sunni jurisprudence, largely absent in its Shi'i counterpart. Previously used for making legal judgements by balancing benefit against harm on issues that the Qur'ān and Sunna neither addressed nor for which they provided guidance, Khomeini applied *maṣlaḥa* for the first time as a principle and virtue of governance;⁵ it thus became a concept that could be used to make judgements and decisions—against the grain of tradition and history—if it served the welfare of an Islamic state. *Maṣlaḥa* in this iteration would eventually become a permanent feature and tool of governance in the

⁴ Rūḥallah Khumaynī, *Vilāyat-i faqīh va ḥukūmat-i islāmī* (Tehran: Chāp va nashr-i 'Arūj, 2009), 71.

⁵ It is worth noting that in contemporary Arabic vernacular, *maṣlaḥa* is used to describe personal social, economic, or political interest.

Islamic Republic with its institutionalisation in the Expediency Council (*majma‘i tashkhīṣ-i maṣlahat-i nizām*) in 1988.⁶

In other words, in his 1978 speech, Khomeini applied *maṣlahā* to disregard consensus on *aḥammiyya*. But he also transformed what were once two purely legalist concepts whose methods were clearly outlined by a scholarly milieu—however diverse—into newly defined social-ethical and political-state weapons. As a result, his peers and foes alike responded.

Liyakat Takim has illustrated the juristic and scholarly response to *maṣlahā*'s emergence in Shi‘i jurisprudence from the second half of the twentieth century. In his chapter, “Maqāṣid al-Sharī‘a in Contemporary Shi‘i Jurisprudence,” Takim shows that *maṣlahā* became a tool by which scholars and jurists could balance traditional legal norms with modern considerations of everyday life. To be sure, there were efforts to reform Shi‘i jurisprudence before 1979 and 1988 to better address the challenges of contemporary life. But the Islamic Republic and the Expediency Council’s establishment—as products of Khomeini’s thought—facilitated a diversity of acceptance and opposition from jurists to *maṣlahā*.⁷

Among Khomeini’s contemporaries who responded to his politics was the late Lebanese jurist and scholar Ayatullah Muḥammad Ḥusayn Faḍlallah (henceforth referred to as Fadlallah; d. 2010). Fadlallah penned his most comprehensive presentation of commanding and forbidding in *Al-Islām wa-manṭiq al-quwwa* (*Islam*

⁶ Liyakat Takim, “Maqāṣid al-Sharī‘a in Contemporary Shi‘i Jurisprudence,” in *Maqāṣid al-Sharī‘a and Contemporary Reformist Muslim Thought, An Examination*, ed., Adis Duderija (New York: Palgrave Macmillan, 2014), 101-125, at 112.

⁷ *Ibid.*, 109-112.

and the Logic of Force) in 1976 during the earliest years of Lebanon's Civil War (1975-1991). Although he wrote *Manṭiq al-quwwa* a couple of years before Khomeini's 1978 speech, Fadlallah was undoubtedly aware of Khomeini, even if the two had not met until later, as the latter lived in Najaf for nearly two years before the former moved from Najaf to Lebanon. Furthermore, Khomeini's politics became well known if not globally, then at least regionally, from 1964 when he was exiled. As such, Fadlallah's insights in *Manṭiq al-quwwa* provide an alternative vision for how ethics and politics might be used to reform or establish a new community—not necessarily a state—during and after a civil war:

[Commanding and forbidding] binds all Muslims to note the process of social deviation, whether religious deviation with individual rebellion against the will of God in acts of worship and transactions (*'ibādāt* and *mu'āmalāt*) or social deviation with collective behaviour that strays from the message's line in favour of individual and societal interest; or political deviation represented by unjust rule in tyranny against the weak and downtrodden, transforming issues of governance into tyranny and aggression... the will of Muslims is to support proper conditions that agree with the will of God and the welfare (*maṣlaḥa*) of man in any matter of public and private affairs... Islam creates self-control in the heart of the community.⁸

Fadlallah not only bonded commanding and forbidding with *maṣlaḥa* more clearly than Khomeini had done, but also promoted the duty as a way by which a community—with neither a state nor a supreme jurist—might foster its own spiritual and material integrity. Doing so, a fractured and downtrodden society could maintain self-control—in the sense of resisting deviation and in the sense of ensuring self-governance. After the Civil War, Fadlallah would add to *maṣlaḥa*'s role one of

⁸ Muḥammad Ḥusayn Faḍlallah, *Al-Islām wa-manṭiq al-quwwa* (Beirut: Dār al-malāk, 2003), 69-70.

“legislative balance,” that is, a way by which law might serve humanity’s earthly and divine exigencies.⁹

Surely Fadlallah’s was an effort to ensure equilibrium, preventing further self-destructive conflict facilitated by Lebanon’s confessional government, which requires a Maronite president, a Sunni prime minister, and a Shi‘i speaker of parliament. He countered what he viewed as discriminatory laws¹⁰ by expanding the boundaries of the *sharī‘a* to include Christians, Jews, and atheists as those who are *ṭāhir* (pure), a legal distinction previously reserved only for Muslims.¹¹ If a national constitution was unable to provide equality, then Islam, in Fadlallah’s estimation, would be able to do so against most liberal expectations. Like Khomeini, in other words, Fadlallah used *maṣlaḥa* to circumvent a tradition for the benefit of a community. Unlike Khomeini, however, Fadlallah deployed *maṣlaḥa* neither for state politics nor to implement or abrogate primary principles of the *sharī‘a*. He used it instead as a tool to expand the *sharī‘a* and unite a diverse community out of the ashes of failed governing institutions.

In 1988, Khomeini and Fadlallah’s politics culminated in disparate proposals for governance. Khomeini, aware of his mortality, established the Expediency Council as an apparatus through which gridlock between the *majlis* (parliament) and the Guardian Council (*shūrā-yi nigahbān*) could be resolved by determining what is

⁹ Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur’ān* vol. 1 (Beirut: Dār al-malāk, 1998), 82-83.

¹⁰ Muḥammad Ḥusayn Faḍlallah, *Min ajl al-Islām* (Beirut: Dār al-malāk, 2003), 161.

¹¹ Muḥammad Ḥusayn Faḍlallah, *Al-masā’il al-fiqhiyya: al-‘ibādāt* (Beirut: Dār al-malāk, 2009), 56.

best for the Islamic Republic.¹² Despite his unrivalled influence, it should be noted that Khomeini did not unilaterally propose the Expediency Council. The Council was fashioned by his earlier writings and declarations, and officially established as a result of debates and discussions.¹³ In this context, however, Khomeini specifically addressed political ineptitude, stating:

If a person is extremely knowledgeable in matters concerning seminaries, but cannot determine what is good for society... or in general lacks the necessary wisdom in social and political issues, that person is not a jurisconsult [or Faqīh]...¹⁴

A few months later on 3 June 1988, Fadlallah delivered a Friday sermon in which he coined the phrase “*dawlat al-insān* (state of humanity)” to promote tolerance and reconciliation against sectarian strife during and after the Civil War. But perhaps Fadlallah’s new “*dawla*” also served as a subversive re-rendering of Khomeini’s *wilāyat al-faqīh*. For Fadlallah defended his state of humanity as a *product* of Islamic sovereignty and against potential detractors, asserting, “we advocate Islam but if it cannot be... then come and let us advocate for *dawlat al-insān*.”¹⁵ In the same speech, Fadlallah placed authority to govern not with a jurist or the Muslim nation (*umma*) but with humanity (*al-insān*) where it had not been placed before. Conferring authority on such a diverse group, neither with majorities nor minorities, Fadlallah continued to promote commanding and forbidding as a virtue

¹² Anoushiravan Ehteshami, *After Khomeini: The Iranian Second Republic* (London and New York: Routledge, 1995), 19.

¹³ Alexander Nachman, “To Loosen and Bind: Khomeini, Rafsanjani, and Supplementary Governance in the Islamic Republic,” *British Journal of Middle Eastern Studies* (ahead of print). DOI: <https://doi.org/10.1080/13530194.2018.1509691>.

¹⁴ Ehteshami, *After Khomeini*, 20.

¹⁵ Muḥammad Ḥusayn Faḍlallah, “Ma‘ārikanā li-l-Islāmiyya,” in *Al-jum‘a: minbar wa-miḥrāb* (Beirut: Dār al-malāk, 1996), 267-284, at 282. Partially cited in Jamal Sankari, *Fadlallah: The Making of a Radical Shi‘ite Leader* (London: SAQI, 2005), 229.

and basis for just politics, as Imām Ḥusayn had done, regardless of the brand of government.¹⁶

But how do Fadlallah and Khomeini’s disparate formulations of sovereignty demonstrate the intimate connection between commanding and forbidding and *maṣlaḥa* in visions of communal reform and revolution, public-private spheres, women, good governance, or even sacrifice? Furthermore, what is the appeal of such conceptual intimacy in modern Islamic politics and political thought? These questions constitute the primary inquiry of this work. But before answering these questions, a background on Fadlallah and Khomeini’s political and intellectual lives is necessary.

Scholarship on Fadlallah’s Life and Politics

There are currently very few accounts of Fadlallah’s life and work in general, particularly in English. The most comprehensive biographical work and the only full account of the Ayatullah’s life in English is Jamal Sankari’s *Fadlallah: The Making of a Radical Shi’ite Leader*. Sankari references almost all of the scholar’s political writings and initiatives yet his study is understandably limited to brief discussions of these works. Fadlallah’s website, *Bayynat*, also provides valuable resources in English and Arabic on his life and initiatives with a large collection of his publications available for download. The most insightful biographical resource in Arabic is ‘Alī Ḥasan Surūr’s *Al-‘allāma Faḍlallah wa-taḥaddī al-mamnū’* (*The Learned Fadlallah and Defiance of the Prohibited*), which is presented as an interview—common for Arabic biographies—with the late scholar. Surūr’s work

¹⁶ Fadlallah linked commanding and forbidding with humanity one week after he proposed his *dawlat al-insān*. Muḥammad Ḥusayn Faḍlallah, “Al-Imām al-Ṣādiq wa-mafhūm al-tashayyu’,” in *Al-jum‘a: minbar wa-miḥrāb* (Beirut: Dār al-Malāk, 1996), 285-301, at 294.

functions not so much as a political biography or survey per se, but more as Fadlallah's self-edited life as he remembers it.

In addition to these volumes, there are a number of articles and book chapters that explore Fadlallah's politics and legacy. Talib Aziz¹⁷ and Ibrahim M. Abu-Rabi'¹⁸ are excellent introductions to Fadlallah's life and legal methodology, explaining why he was both a controversial and enigmatic figure. Aziz's chapter is an insightful examination of how Fadlallah's formative years impacted his approach to jurisprudence regarding women and minorities, affecting his reception in Shi'i jurisprudential circles. Abu-Rabi', on the other hand, places Fadlallah within a wider milieu of Muslim scholars and political theoreticians, such as the Sunni-Egyptian scholar, Sayyid Quṭb (d. 1966), Franz Fanon (d. 1961), and Karl Marx (d. 1883).

Morgan Clarke and Lara Deeb have also contributed valuable anthropological research on Fadlallah and his relationship both to the *marja' iyya* and to Lebanese society.¹⁹ Both demonstrate not only Fadlallah's relevance to Shi'ism and influence in Lebanon but also his position as a unique authority on the geographical and political

¹⁷ Talib Aziz, "Fadlallah and the Remaking of the Marja' iyya," in *The Most Learned of the Shi'a: The Institution of the Marja' Taqlid*, ed., Linda S. Walbridge (New York: Oxford UP, 2001), 205-215.

¹⁸ Ibrahim M. Abu-Rabi', "Toward an Islamic Liberation Theology: Muḥammad Ḥusayn Faḍlallah and the Principles of Shi'ī Resurgence," in *Intellectual Origins of Islamic Resurgence in the Modern Arab World* (Albany: State University of New York Press, 1996), 220-247.

¹⁹ Lara Deeb has mapped Fadlallah's impact and relationship with Lebanese society, particularly his relevance to traditionally marginalised groups, such as Shi'i youth and women. See Lara Deeb, "Sayyid Muhammad Husayn Fadlallah and Shi'a Youth in Lebanon," *Journal of Shi'a Islamic Studies* 3, no. 4 (2010): 405-26, and Lara Deeb, *An Enchanted Modern: Gender and Public Piety in Shi'i Lebanon* (Princeton: Princeton University Press, 2006).

edge of the Najaf and Qom-centred juridical elite.²⁰ Stephan Rosiny's chapter, "'The Tragedy of Fatima Al-Zahrā' in the Debate of Two Shiite Theologians in Lebanon,'"²¹ discusses the social and political impact of Fadlallah's controversial retelling of the Shi'i master narrative in which 'Umar, in an attempt to coerce the first Shi'i Imām, 'Alī, and his wife Fāṭima (also the Prophet's daughter) to accept Abū Bakr as Caliph, pushed Fāṭima against a wall killing her unborn son and breaking her rib.

Although Takim accounts for Fadlallah's idea of *maṣlaḥa*,²² Joseph Alagha is the only scholar of whom I am aware who has engaged in a comparative study—however brief—dedicated to Fadlallah's formulation of *maṣlaḥa*, comparing it to that of the Egyptian scholar, Gamāl al-Bannā (d. 2013).²³ Alagha compares how the two used *maṣlaḥa* to justify certain types of public art, specifically performance art like dancing. Both Fadlallah and al-Bannā, Alagha shows, weighed the ways in which art serves a public good or benefit (*maṣlaḥa*) against its opposite, harm (*mafsada*). Along with Alagha's scholarship, Clarke's work is particularly relevant for the current study because he shows that Fadlallah, despite being geographically marginal (and politically marginal for some), profoundly affected Islamic politics. The implication of Alagha and Clarke's work is that Fadlallah provides an important point of comparison when examining not only Shi'i politics but also global political thought.

²⁰ Morgan Clarke, "Making a Centre in the Periphery: The Legitimation of Muhammad Husayn Fadlallah's Beirut Marja'iyya," *British Journal of Middle Eastern Studies* 45, no. 1 (2018): 37-57.

²¹ Stephan Rosiny, "'The Tragedy of Fatima Al-Zahrā' in the Debate of Two Shiite Theologians in Lebanon," in *The Twelver Shia in Modern Times: Religious Culture and Political History*, eds., Rainer Brunner and Werner Ende (Leiden: Brill, 2001), 207-219.

²² See Takim, "Maqāṣid al-Sharī'a in Contemporary Shi'i Jurisprudence," 115-119.

²³ Joseph Alagha, "G. Banna's and A. Fadlallah's Views on Dancing," *Sociology of Islam* 2, 1-2 (2014): 60-85.

A recent Ph.D thesis by Bianka Agnes Speidl provides a comprehensive study of Fadlallah's *Manṭiq al-quwwa* as the turning point in his political biography. In her "Conceptualisation of Power in the Thought of Muḥammad Ḥusayn Faḍlallah,"²⁴ Speidl reads *Manṭiq al-quwwa* as exemplary activist Shi'i politics. She argues that despite his distance from Hizbullah, he influenced regional and Islamic politics during the 1970s and 1980s, setting the stage for the height of his authority after Khomeini's death. Speidl's most significant contribution in her work is to show Fadlallah's relevance and nuance on par with better-known thinkers such as Muḥammad Bāqir al-Ṣadr and Mūsā al-Ṣadr. Speidl also makes available numerous sources that have been either unaddressed or have not received previous engagement.

Nevertheless, most studies that engage with Fadlallah are brief, focusing on a single aspect of his social, legal, or political positions. Some are shorter surveys of his life and thought; fewer are longer expositions on a range of his ideas, too broad to discuss in substantial depth. None, except for Alagha's short yet excellent piece, engage comparatively in how he formulated or mobilised historically significant concepts like *maṣlaḥa* and commanding and forbidding. Nor do they examine his position and influence on theories of Islamic sovereignty against what might be considered normative theorists like Khomeini.²⁵ In other words, they focus on persona rather than concepts or they focus on single moments in time.

²⁴ Bianka Agnes Speidl, "Conceptualisation of Power in the Thought of Muḥammad Ḥusayn Faḍlallah," DPhil Diss., (University of Exeter, 2015).

²⁵ Here, "normative" is used to distinguish between theories that established a standard against which all subsequent politics are measured and/or theories that might emanate from a centre of knowledge, like Qom or Najaf. This idea will be expanded later in the introduction.

Born in Najaf in 1935 to a family of scholars who migrated there from Lebanon in 1928, Fadlallah tells us that his most influential teachers in the Najaf seminary included Sayyid Abū al-Qāsim al-Khū'ī (d. 1993), for whom Fadlallah later served as representative (*wakīl*) in Lebanon, Sayyid Muḥsin al-Ḥakīm (d. 1970), Sayyid Muḥammad Shāhrūdī (b. 1925), and Shaykh Ḥusayn al-Ḥillī (d. 1974).²⁶ But perhaps his most significant teacher was his uncle, Sayyid Muḥammad Sa'īd Faḍlallah, who encouraged the young Fadlallah not only to learn from his classes, teachers, and books, but also to question the intellectual veracity of an argument and its potential to convince or be refuted.²⁷

During his formative years in Najaf, Fadlallah, like Khomeini, wrote poetry and recited his first poem about the occupation of Palestine at the age of twelve.²⁸ His interest in politics intensified and he later wrote consistently for *Al-aḍwā'*,²⁹ the journal that propagated the Iraqi Da'wa Party's (*Ḥizb al-da'wa*) platform. This platform, established by Fadlallah's friend and colleague, Muḥammad Bāqir al-Ṣadr (d. 1979), advocated for an Islamic state in Saddām Ḥusayn's (d. 2006) Iraq. In reality, Fadlallah's relationship with political parties was more complicated. Although some later labelled him the "spiritual leader" of the Lebanese Hizbullah, Sankari contends that Fadlallah maintained close ties with the Da'wa Party's leadership but never became a formal member due to differences of opinion on advancing Islamist

²⁶ 'Alī Ḥasan Surūr, *Al- 'allāma Faḍlallah wa-taḥaddī al-mamnū'* (Beirut: Dār al-malāk, 1991), 33.

²⁷ *Ibid.*, 44.

²⁸ Aziz, "Fadlallah and the Remaking of the Marja'īya," 205.

²⁹ A collection of Fadlallah's articles in *Al-aḍwā'* can be found in Muḥammad Ḥusayn Faḍlallah, *Qaḍāyānā 'alā ḍaw' al-Islām* (Beirut: Dār al-malāk, 1997).

causes and the clergy's role in politics.³⁰ But these differences never manifested as viciously as Khomeini's criticisms of Najaf's clerical elite.

It is likely that Fadlallah was unable to harshly criticise Najaf's clerical establishment due to his proximity to its institutions and his tutelage under the quietist yet profoundly influential Ayatullah al-Khū'ī (d. 1993).³¹ At the time, Fadlallah was still a *mujtahid* and had not yet become a *marja' taqlīd* (the highest source of emulation for Shi'ī believers to which he would officially ascend in 1995). Nevertheless, his articles in *Al-aḏwā'* and the religious opinions therein indicate that he was deeply concerned with political-theological matters related to the clergy.

Fadlallah remained politically active in Lebanon after his migration from Najaf in 1966 but he maintained his independence from political parties, including Hizbullah from its inception in 1982. He wrote for the Lebanese student journal, *Al-munṭalaq* (*The Outbreak*), in which he questioned whether the “party of the Islamic nation” or the “nation of the party” should guide change,³² and many of his articles for *Al-munṭalaq* were later compiled in *Al-ḥarika al-islāmiyya: humūm wa-qaḏāyā* (*The Islamic Movement: Obstacles and Issues*). Yet, despite playing a deeply influential role for many Lebanese Shi'is, he once asserted that he “was and never

³⁰ Martin Kramer, “The Oracle of Hizbullah: Sayyid Muhammad Husayn Fadlallah,” in *Spokesmen for the Despised: Fundamentalist Leaders in the Middle East*, ed., R. Scott Appleby (Chicago: University of Chicago Press, 1997), 83-181; David Kenner, “The Sheikh Who Got Away,” *Foreign Policy* (6 July 2010). URL: <http://foreignpolicy.com/2010/07/06/the-sheikh-who-got-away-2/>; Sankari, *Fadlallah*, 76.

³¹ Devin J. Stewart, “The portrayal of an Academic Rivalry: Najaf and Qum in the Writings and Speeches of Khomeini, 1964-78,” in *The Most Learned of the Shi'a: The Institution of the Marja' Taqlid*, 216-229.

³² Muḥammad Ḥusayn Faḏlallah, “Man alladhī yaqūd ‘amaliyyat al-taghyir fī al-umma ḥizb al-umma aw ummat al-ḥizb,” vols. ā-j, in *Al-ḥarika al-islāmiyya: humūm wa-qaḏāyā* (Beirut: Dār al-malāk, 2001), 65-108.

would be the [spiritual leader] of any Islamic movement.”³³

After his permanent move to al-Nab‘a in Beirut, Lebanon, he established *Usrat al-ta’ākhī* (The Fraternal Family) where he delivered lectures on socio-political issues related to Islam and Lebanon. This context, to a greater extent than Iraq, exposed Fadlallah to the intimacy of Lebanese political and social movements with global ones, including Arab nationalism, Islamism (both Shi‘i and Sunni), Christian social movements, and communism, motivating him to engage with a more diverse political public.³⁴ And while Lebanon’s political diversity undoubtedly influenced his position on Khomeini’s *wilāyat al-faqīh*, Fadlallah remembers fondly and warmly many visits with the revolutionary leader after the latter’s success.³⁵

Although Fadlallah began carving out an intellectual and political space for himself with *Manṭiq al-quwwa*, not until 1978 did he fill a void left by a more influential Shi‘i scholar and political theoretician. The Iranian born Sayyid Mūsā al-Ṣadr (disappeared in 1978) arrived in Lebanon in 1959. Migrating, like Fadlallah, from Najaf, Mūsā al-Ṣadr endeavoured to “[steer] the masses of his community” in Lebanon “toward a more assertive political stand.”³⁶ Mūsā al-Ṣadr’s work is addressed in more detail in the third chapter, but, like his previously mentioned cousin, Muḥammad Bāqir al-Ṣadr, Mūsā’s initiatives involved political parties and ideologising Shi‘ism as a movement of the oppressed. For example, Mūsā was the

³³ Joseph Alagha, *The Shifts in Hizbullah’s Ideology: Religious Ideology, Political Ideology, and Political Program* (Leiden: Amsterdam University Press, 2006), 36; Sankari, *Fadlallah*, 200.

³⁴ Surūr, *Al-‘allāma Faḍlallah*, 54-56.

³⁵ *Ibid.*, 108.

³⁶ Majed Halawi, *A Lebanon Defied: Musa al-Sadr and the Shi‘a Community* (Boulder, Colorado: Westview Press, 1992), 165.

first head of the Supreme Islamic Shi‘i Council (*al-Majlis al-Islāmī al-Shī‘ī al-A‘lā*) in Lebanon and he subsequently co-founded, with Ḥusayn al-Ḥusaynī, Amal (*Afwāj al-Maqāwama al-Lubnāniyya*) in 1974. Both organisations, it should be noted, Fadlallah thought unnecessary. Less than a year after Mūsā’s disappearance and with his engagement with the successful Iranian Revolution in 1979, Fadlallah began to fill the socio-political void left by his predecessor.³⁷

The 1980s and 1990s proved to be Fadlallah’s most prolific and influential period during which he also grappled with the most destructive period of the Civil War, the post-Iranian Revolution period, and then the post-war/post-Khomeini era. An initial supporter of the Iranian Revolution, Fadlallah quickly became critical of its leadership’s claim to global Islamic revolution. He argued that despite succeeding in their context, exporting the revolution beyond Iran is untenable. In his article on *wilāyat al-faqīh* in the early 1980s, he also critiqued the authority from whence clerical rule stems. From the 1980s, Fadlallah thus appears to have become increasingly controversial among scholars; this is the era that comprises much of the present study.

Among his most significant works from the 1980s and after are *Ḥiwārāt fī al-fikr wa-l-siyāsa wa-l-ijtimā‘* (*Discussions in Thought, Politics, and Society*), in which he discusses the effects of colonialism on Islamic society and politics, as well as how these effects facilitated new debates on authority in the Middle East and the Islamic world, perhaps as a partial response to the growing al-Qā‘ida movement and other

³⁷ Sankari, *Fadlallah*, 170-171.

militant Muslim groups.³⁸ *Ta'āmmulāt islāmiyya ḥawla al-mar'a*, published in 1992 after the Civil War and Khomeini's death, is one of Fadlallah's most significant works in which he challenged the consensus on issues related to women in Islamic law and society. As discussed in chapter three, he explicitly placed *maṣlaḥa* and commanding and forbidding alongside one another in this work to dramatically change women's position in society and politics.³⁹ His other significant works include the twenty-five-volume *Tafsīr min waḥī al-Qur'ān* (*Exegesis and the Revelation of the Qur'ān*),⁴⁰ published in the mid-late nineties for a specialised though not exclusively legally educated audience. There is also a twenty-volume collection of lectures he gave in Damascus in the mid-nineties, entitled *Al-nadwa*, his two-volume *Al-masā'il al-fiqhiyya (al-'ibādāt and al-mu'āmalāt*; jurisprudential issues of worship and interpersonal transactions in English),⁴¹ written as he ascended to *marja' al-taqlīd*, also in the mid-nineties, and finally his Friday lectures from 1988, entitled *Al-jum'a*, in which he introduced *dawlat al-insān*.⁴²

Scholarship on Khomeini's Life and Politics

In some ways, Khomeini's political and personal lives—insofar as these two “lives” might be separated—are better known and more straightforward than Fadlallah's. There is no question regarding the extent to which Khomeini engaged in politics, even if the nature of his opposition to the shah's White Revolution is

³⁸ Muḥammad Ḥusayn Faḍlallah, *Ḥiwārāt fī al-fikr wa-l-siyāsa wa-l-ijtimā'* (Beirut: Dār al-malāk, 2001).

³⁹ Muḥammad Ḥusayn Faḍlallah, *Ta'āmmulāt islāmiyya ḥawla al-mar'a* 6th ed. (Beirut: Dār al-malāk, 1997).

⁴⁰ Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur'ān* vols. 1-25 (Beirut: Dār al-malāk, 1998).

⁴¹ Muḥammad Ḥusayn Faḍlallah, *Al-masā'il al-fiqhiyya: al-'ibādāt and al-mu'āmalāt* (Beirut: Dar al-malāk, 2009).

⁴² Muḥammad Ḥusayn Faḍlallah, *Al-jum'a: minbar wa-miḥrāb* (Beirut: Dār al-malāk, 1996).

debated; this is addressed in the third chapter. Yet, Khomeini remains one of the most controversial figures in recent history. On the one hand, the Islamic Republic's efforts to establish a hagiography for the revolutionary leader cum Supreme Leader have resulted in numerous editions of his scholarship, making it exceedingly difficult to locate first editions of his work. (I have done my best in the present study to refer to the earliest available editions.) The more controversial events in the Islamic Republic's history are thus marginalised or prohibited in public discussions, in particular the 1988 executions of thousands of opposition members (mainly of the *Mujāhidīn-i khalq*).⁴³

State efforts to establish a hagiography are coupled with false and sensational rumours outside of Iran about Khomeini's legal and political judgements. Many of these rumours are easily found on blogs in Persian and English.⁴⁴ One can even find an Arabic edition of *Kashf al-asrār*, which some scholars claim was a Jordanian author's intentional mistranslation meant to propagate anti-Shi'i sentiments in the Arab world.⁴⁵ These discussions are, to an extent, similar to attempts to prove that Khomeini's private life was a betrayal of his political life, and vice versa;⁴⁶ this issue is addressed in chapter two. At the same time, there are numerous biographies and

⁴³ *Qantara*, "Son of Ayaollah Hossein Ali Montazeri Jailed over Execution Tape" (28 November 2016). URL: <https://en.qantara.de/content/son-of-ayatollah-hossein-ali-montazeri-jailed-over-execution-tape>.

⁴⁴ See, for example, *Shiachat*, "tahrirolvasleyh" (28 January 2003). URL: <http://www.shiachat.com/forum/topic/4867-tahrirolvasleyh/>.

⁴⁵ Ibrāhīm al-Disūqī, "Qaḍāyā jāriyya: tasā'ulāt...! wa muḥākīmāt...!: 'Kashf al-asrār' al-Khumayniyya bayn aṣluhu al-Fārsī wa-l-tarjama," *Noormags* 15 (October 1995): 66-85. URL: <https://www.noormags.ir/view/ar/articlepage/390522/>.

⁴⁶ See, for example, Baqer Moin, *Khomeini: Life of the Ayatollah* (London: I.B. Taurus, 2009), 272-274. Moin argues that Khomeini's mystical poetry in which he praises intoxication from wine constitutes a contradiction with his public life. As chapter two will demonstrate, Khomeini's poetry—and his inner, private life—is instead an important complement to his public/political life.

sources in nearly every language, especially English, Arabic, and Persian, dealing with a plethora of issues directly or indirectly related to Khomeini's life.

The above challenges notwithstanding, there are important and credible studies on Khomeini. In recent years there appears to be a resurgence of interest in his thought, especially regarding his work that has been seldom addressed by English language scholarship. In English, Vanessa Martin's *Creating an Islamic State: Khomeini and the Making of a New Iran* (2003), Arshin Adib-Moghaddam's edited volume *A Critical Introduction to Khomeini* (2014), the introduction to Amjad H. Shah Naqavi's *The Mystery of Prayer: The Ascension of the Wayfarers and the Prayer of the Gnostics* (2015), and Ervand Abrahamian's *Khomeinism: Essays on the Islamic Republic* (1993) are but a handful of works that present excellent and novel insights into Khomeini's political life and thought. Many of these also chronicle his life from his formative years in the Qom seminary until his death. In addition to these, Sajjad Rizvi,⁴⁷ Robert Gleave,⁴⁸ Michael M. J. Fischer,⁴⁹ Abbas Amanat,⁵⁰ and

⁴⁷ Sajjad Rizvi, "'Seeking the Face of God': The Safawid *Hikmat* Tradition's Conceptualisation of *Wilāya Takwīniyya*," in *The Study of Shi'ism, History, Theology and Law*, eds., Farhad Daftary and Gurdofarid Miskinzoda (London: I.B. Taurus, 2014), 391-410.

⁴⁸ Robert Gleave, "Modern Šī'ī Discussions of 'Ḥabar al-Wāḥid": Šādr, Ḥumaynī and Ḥū'ī," *Oriente Moderno*, Nuova serie, Anno 21 (82), Nr. 1, Hadith in Modern Islam (2002): 179-194 and Robert Gleave, "Political Aspects of Modern Shi'i Legal Discussions: Khumayni and Khu'i on *ijtihād* and *qada'*," *Mediterranean Politics* 7, no. 3 (2002): 96-116.

⁴⁹ Michael M. J. Fischer, "Becoming Mollah: Reflections on Iranian Clerics in a Revolutionary Age," *Iranian Studies* 13, nos. 1-4 (1980): 83-117 and Michael M. J. Fischer, *Iran: From Religious Dispute to Revolution* (Wisconsin: University of Wisconsin Press, 2003).

⁵⁰ Abbas Amanat, "From *ijtihād* to *wilāyat-i faqīh*: The Evolving of the Shi'ite Legal Authority to Political Power," *Logos Journal* 2, no. 3 (2003): 1-15.

Negin Yavari's⁵¹ articles and chapters have engaged in fecund and much needed comparative studies on specific aspects of Khomeini's thought or works, such as *wilāya takwīniyya*, *ijtihād*, and his *tafsīr*.

In Persian there are countless valuable resources on Khomeini's life and thought, including Ḥamīd Rawḥānī's three-volume *Nahzat-i Imām Khumaynī (Imam Khomeini's Movement)*, a number of Hashemi Rafsanjani's memoirs, as well as monographs published by The Institute for the Compilation and Publication of Imam Khomeini's Works (*Mu'assasa-yi tanzīm va nashr-i āṣār-i Imām Khumaynī*). Other works have been published by 'Arūj Publishing House (*Chāp va nashr-i 'Arūj*), as well as countless master's and doctoral dissertations, including 'Alī Kuhn Furūtqa's 2009 dissertation entitled "Barrisi-yi muqāyisa-yi mafhūm-i maṣlaḥat-i dawlat dar andīsha-yi siyāsī-yi Imām Khumaynī va Hobbes" ("A Comparative Conceptual Study of the Concept of Welfare of the State in Imam Khomeini's and Hobbes's Political Thought").

In other ways, some of these excellent works fail to place Khomeini outside of his Iranian or "Islamic" context, though Furūtqa and Yavari are among the few who have avoided this pitfall. Another recent monograph, entitled *Barrīsī-yi mafhūm-i āzādī va qānūn dar andīsha-yi Imām Khumaynī, John Locke, va Montesquieu (A Comparison of the Concept of Liberty and Law in the Thought of Imam Khomeini, John Locke, and Montesquieu)*, compares Khomeini's ideas on liberty and law with

⁵¹ Negin Yavari, "Tafsīr and the Myth of Islamic Fundamentalism," in *Tafsīr and Islamic Intellectual History: Exploring the Boundaries of a Genre*, eds., Andreas Gorke and Johanna Pink (Oxford: Oxford University Press, 2014), 289-319.

those of Montesquieu and Locke.⁵² Despite their various contributions, however, most scholarship on Khomeini, at least in English, often confines his life and work to Iranian history, Iranian Shi'ism, or general Shi'ism, ignoring its global nature.

As partially addressed above, Khomeini was as much a product of global discussions on politics as Iranian, or even Shi'i ones. He wrote a great deal of his seminal works, such as *Vilāyat-i faqīh* and *Tahrīr al-wasīla*, in exile abroad and often referenced thinkers from Marx to Aristotle; he was also personally acquainted with the French historian Michel Foucault. Chapters two and three of the present study serve as the best examples of how Khomeini and Fadlallah were products of political trends in global history and how they both addressed and presented significant challenges to dominant ideological tendencies, such as Marxism, liberalism, and republicanism. Furthermore, few of the above works on Khomeini are comparative studies and fewer engage with *maṣlaḥa* and commanding and forbidding as the respective epitomes of politics and ethics, as some Persian language scholarship has indicated. This is discussed in chapter one.

Clearly, there is a discrepancy in content between Persian language and English language scholarship on Khomeini. Martin, Yavari, and Naqavi not included, scholarship in English tends to avoid a nuanced engagement with Khomeini's seldom-examined yet important works, such as *Kashf al-asrār (Uncovering of Secrets)*, *Tahrīr al-wasīla*, *Sirr al-ṣalāt (Mysteries of Prayer)*, his speeches found in the multi-volume *Ṣaḥīfa-yi Imām*, his *Vaṣīyat nāma (Last Will and Testament)*, his

⁵² Raḡīya Tamīmī, *Barrisī-yi maḥmūd-i āzādī va qānūn dar andīsha-yi Imām Khumaynī, John Locke, va Montesquieu* (Tehran: Chāp va nashr-i 'Arūj, 2007). For another comparative study, see also, Sayyid Ḥusayn Yūsifī-Fakhr, *Siyāsāt va ijtihād dar andīsha-yi Ghazālī va Imām Khumaynī* (Tehran: Chāp va nashr-i 'Arūj, 2010).

Tafsīr-i sūra-yi ḥamd (Exegesis of *Sūra Ḥamd*, or *Sūrat al-fātiḥa* in Arabic), and more. It should be noted that the present study is by no means a revisionist account of Khomeini's life or a survey of all of his works. This study is, however, an examination of facets of his political life never before placed in conversation with other political forms and ideas. How, for example, might his visions of *maṣlaḥa* and commanding and forbidding find dialogue with Fadlallah's work, with both secular and Muslim global ideas of gender, esotericism in public-private life, and state?

Born in 1902 in Khomein, Iran, Khomeini, like Fadlallah, came from a family of clerics. Although his grandfather was from Kashmir—Khomeini later used “*Hindī*” as his pen name for poetry—his family likely originated in Nishapur, Iran. Khomeini began his seminary education in Arak at the age of nineteen, studying with the highly influential scholar and jurist, Ayatullah ‘Abd al-Karīm al-Ḥā’irī Yazdī (d. 1937), before moving in 1922 with al-Ḥā’irī Yazdī to found the Qom seminary. Here he continued his education with Ayatullah al-Ḥā’irī Yazdī and Mīrzā Muḥammad ‘Alī Shāh-Ābādī (d. 1950). He received permission (*ijāza*) to practice as a *mujtahid* (one who can use *ijtihād*—independent reasoning based on Islamic sources to make legal judgements) at the exceptionally young age of thirty-six.

Interested in politics from a young age, Khomeini frequently questioned the politically quietest positions of those like al-Ḥā’irī Yazdī versus the activist positions of those like Sayyid Ḥasan Mudarris (d. 1938), a former constitutionalist who served

in parliament and who later died in prison for his resistance to the army's proliferation after the Qajar dynasty's (1799-1925) formal end.⁵³

Unlike Mudarris, however, Khomeini supported republicanism at the time. Vanessa Martin argues that the Constitutional Revolution of the late Qajar era coincided with a "revival" of the study of *'irfān* (Gnosticism), which became fundamental to Khomeini's ethics, politics, and philosophy, as is addressed in chapter two.⁵⁴ His engagement with gnostic mysticism through his teacher, Ayatollah Shāhābādī, exposed him to the diversity of mysticism, including Mullā Ṣadrā (d. 1640), Mullā Hādī Sabzivārī (d. 1870), and even Plato's works. According to one of Khomeini's students, 'Abbās Zaryāb Khū'ī (d. 1995), Khomeini based his idea of *wilāyat al-faqīh* on the philosopher king after reading Plato's *Republic*.⁵⁵

Khomeini's *Miṣbāḥ al-hidāya* (*The Light of Guidance*), published in 1931, is one of his earliest works on *'irfān* while his best-known early work is perhaps *Kashf al-asrār* (*Uncovering of Secrets*), published between 1943-1944. But, as will be discussed in chapters two and three, *Kashf* presents a watershed in Khomeini's political thought. We see in this work a clear turn to more public activism in his writings in which he expressed intense animosity toward Marxism and various forms of secularism, along with a partial justification for the shah's overthrow.

⁵³ Vanessa Martin, *Creating an Islamic State: Khomeini and the Making of a New Iran* (London: I.B. Tauris, 2000), 29-31.

⁵⁴ *Ibid.*, 31-32.

⁵⁵ Nequín Yavari, "Khomeini, Ayatollah (1902-1989)," in *The Princeton Encyclopedia of Islamic Political Thought*, eds., Gerhard Bowering, associate editors Patricia Crone, Wadad Kadi, Devin J. Stewart, and Muhammad Qasim Zaman, assistant editor Mahan Mirza (Princeton: Princeton University Press, 2013), 296, at 296.

In any case, Khomeini remained relatively marginal in Iranian politics until he found an opportunity to fill a vacuum of authority left by Iran's foremost two clerics, Ayatullahs Kāshānī (d. 1962) and Burūjirdī (d. 1961). Their deaths auspiciously coincided with the shah's White Revolution, an initiative that included major land redistribution and property reforms, as well as the extension of certain rights and services to women that had previously been absent. Khomeini seized on this moment to sharpen his criticism of the shah's policies labelling them anti-Islamic, anti-populist, and pandering to Western pressure to modernise. He therefore attempted to politicise those segments of the Iranian population who had benefited least from these policies. Khomeini was eventually imprisoned, leading to his exile in 1964, an event that only strengthened his anti-Western and anti-secular politics in exile and thereafter.

The most profound lesson of Khomeini and the Iranian Revolution is perhaps that modernity, as Reinhard Schulze has argued, is not concomitant with liberal or Marxist principles of history, which posit religion's withdrawal from public space and politics. Nor is religion's ideologisation incongruent with modernity.⁵⁶ And, as Richard Bulliet contends, Islam cannot be ignored as an historical force; it must be granted equal attention to that of any other force.⁵⁷ But these are grand assertions. What of those concepts like *maṣlaḥa* and commanding and forbidding that remain marginal in Western scholarship on Islamic politics and Middle Eastern history? In Fadlallah and Khomeini's iterations of these concepts, they refer to the socio-ethical and political aspects of sovereignty on the one hand, and, on the other, have come to

⁵⁶ Reinhard Schulze, *A Modern History of the Islamic World* (New York: I. B. Taurus, 2000), 244

⁵⁷ Richard Bulliet, *Islam: The View from the Edge* (New York: Columbia University Press, 1994), esp. 4.

serve as a means by which one might liberate oneself from the constraints of theology.

Why Fadlallah and Khomeini?

It is worth explaining briefly why I have chosen to compare Khomeini, a towering political theoretician and activist, with Fadlallah, a lesser-known intellectual whose impact on regional let alone global politics is less apparent. It is fair to argue that Muḥammad Bāqir al-Ṣadr, Mūsā al-Ṣadr, al-Khū'ī, or Muḥammad Muṭahharī—Khomeini's erstwhile student—would have provided more obviously comparable sources and clearer points of comparison. This is in part because they are easier than Fadlallah to place on a political spectrum. Their positions on the existence or establishment of an Islamic state, with or without violence, is well known. There is also a larger corpus of secondary literature on them, allowing for clearer contributions with less exhaustive research.

Why, then, have I chosen Fadlallah whose politics is ostensibly ambiguous and who appears to exist at the geographical and hierarchical periphery of Shi'ism and Middle Eastern politics? The answer is simple: I have chosen him precisely because of these qualities. Muḥammad Bāqir al-Ṣadr's *khilāfat al-insān* and his Da'wa Party have been compared to Khomeini's ideas. Monographs have been written about Mūsā's role in Lebanese politics, and Muṭahharī's relationship to Khomeini has been explored. But Fadlallah's immediate relevance to Khomeini's and other theories of Islamic sovereignty and politics is unclear. Morgan Clarke and Mirjam Künkler have recently addressed this gap in scholarship in a recent issue of

the *British Journal of Middle Eastern Studies*.⁵⁸ Indeed, Fadlallah remains—even after his death—influential in Lebanon, Iraq, and the Gulf. And as the conclusion to this work shows, he is also respected in Iran—if only among an elite readership. His political life outside of parties and a state, as well as his approach to the ethics of political violence, makes him different from other potential figures to which a comparison might be made. But this is also why a comparative study of Fadlallah versus Khomeini allows for more rewarding results.

Identifying Fadlallah and Khomeini’s fault lines on *ḥisba* and *maṣlaḥa* fleshes out differences and methods that a more general comparison on, say, their ideas of an Islamic state would fail to do. And identifying the core functions of their respective ethics and politics through concepts that have a long history contextualises the relevance of Fadlallah’s thought. Doing so provides new points of comparison that other thinkers might not provide. Comparing Khomeini with Fadlallah therefore reveals a challenge (or at least an alternative) on the periphery, or a “view from the edge,” toward Khomeini’s hegemonic ideas of an Islamic state.

Furthermore, Fadlallah and Khomeini have unexpected if only superficial and novel commonalities. It is a fortuitous coincidence that each experienced their own migrations (*hijra*)—Khomeini from Iran to Turkey, then to Iraq, in 1964-65, and Fadlallah from Iraq to Lebanon in 1966. They also both authored *rubā’iyāt* (quatrains), a topic addressed in the second chapter. In other words, Fadlallah compared to Khomeini opens new and diverse, albeit less obvious, channels of debate through previously unconnected concepts in English-language scholarship.

⁵⁸ Morgan Clarke and Mirjam Künkler, “De-centering Shi’i Islam,” *British Journal of Middle Eastern Studies* 45, no. 1 (2018): 1-17.

What is Commanding Right and Forbidding Wrong?

While it would be unrealistic to provide a comprehensive history of commanding and forbidding or *maṣḥala*, this section and the next provide a synopsis of historical debates on these concepts. Doing so will help to provide later context in chapter one on how Khomeini and Fadlallah departed from or drew on these histories. In-depth studies on commanding right and forbidding wrong are scant. The duty is marginal in studies on modern Shi‘i intellectual history, in part because it is often associated with Sunni Saudi Arabia’s morality police, which function as the state’s complete dominance over the public sphere, as Frank E. Vogel’s work demonstrates.⁵⁹ Mehdi Moslem’s *Factional Politics in Post-Khomeini Iran* (2002) briefly attests to commanding and forbidding’s significance among conservatives in post-revolutionary Iran,⁶⁰ while Yavari’s chapter, “Qur’anic Sanction and the Semiotics of Sovereignty in Contemporary Iran,” illustrates the spectrum of public debates on the duty in Iran.⁶¹ A recent monograph, published by The Institute for Compilation and Publication of Imam Khomeini’s Works, entitled *Amr bih ma ‘rūf va nahī az munkar az dīdgāh-i Imām Khumaynī (Commanding Right and Forbidding Wrong from Imam Khomeini’s Perspective)*, is perhaps the only scholarship available in which the Ayatullah’s pronouncements on the duty are presented in whole.⁶² While

⁵⁹ Frank E. Vogel, “The Public and Private in Saudi Arabia: Restrictions on the Powers of Committees for Ordering the Good and Forbidding the Evil,” *Social Research: An International Quarterly of Social Sciences* 70, no. 3 (2003): 749-68.

⁶⁰ Mehdi Moslem, *Factional Politics in Post-Khomeini Iran* (New York: Syracuse University Press, 2002), 202.

⁶¹ Nequin Yavari, “Qur’anic Sanction and the Semiotics of Sovereignty in Contemporary Iran,” in *Approaches to the Qur’an in Contemporary Iran*, ed., Alessandro Cancian (Oxford: Oxford University Press, forthcoming).

⁶² Mu’assasa-yi tanzīm va nashr-i āṣār-i Imām Khumaynī, *Amr bih ma ‘rūf va nahī az munkar az dīdgāh-i Imām Khumaynī* (Tehran: Chāp va nashr-i ‘Arūj, 2012).

this dissertation is meant in no way as a history of commanding and forbidding, a background of the concept is necessary.

The principle of commanding and forbidding has been a common though not ubiquitous addition to Imāmī (“Twelver-Shi‘i”) jurisprudential treatises (*risālah*) at least since the Persian scholar Abū Ja‘far Muḥammad bin Ḥasan Ṭūsī (d. 1067).⁶³ In general, the duty is not unlike most societies’ standards of social ethics, which dictate what is and is not acceptable public or private behaviour, as well as which methods are acceptable, approved of, or encouraged for promoting, discouraging, or preventing these behaviours. In Islamic jurisprudence, however, the three agreed-upon methods for promoting, discouraging, or preventing certain behaviour—with varying degrees of preference depending on the situation—are the heart (one’s mind), tongue (verbal or physical gesture), and hand (force).

Take, for example, the story of one of the earliest political instances of commanding right and forbidding wrong, which also serves as a fecund comparison to Khomeini’s 1978 declaration. A goldsmith in Marv, Khorasan, named Abū Ishāq Ibrāhīm ibn Maymūn, confronted Abū Muslim (d. 755), the architect of the ‘Abbāsīd revolution—the same revolution which succeeded in establishing a new Caliphate in Iraq after overthrowing the Damascus-based Umayyid Caliphate. In their third confrontation, Ibn Maymūn said the following to Abū Muslim:

I see nothing more meritorious I can undertake in [sic] God’s behalf than to wage holy war against you. Since I lack the strength to do it with my hand, I will do it with my tongue. But God will see me, and in Him I hate you.⁶⁴

⁶³ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2010), 252.

⁶⁴ *Ibid.*, 3-4.

Abū Muslim killed the goldsmith shortly thereafter, but the goldsmith appeared to have taken seriously the Prophetic tradition, stating: “The finest form of holy war is speaking out in the presence of an unjust ruler, and getting killed for it.”⁶⁵

While the Qur’ān does not address commanding and forbidding beyond verbal actions, the Prophetic tradition explains: “Whoever sees a wrong and is able to put it right with his hand, let him do so; if he can’t, then with his tongue; if he can’t then with [or in] his heart.”⁶⁶ Ibn Maymūn clearly felt that his tongue was his best recourse. However, despite being the best-known Prophetic tradition for the duty, nowhere does the Prophet explicitly use the phrases “commanding right” and “forbidding wrong”; he refers only to *munkar* (wrong) and *ghayyara* (make right, or change). Nevertheless, most scholars agree that he was referring to the duty.⁶⁷ This is important to remember because Fadlallah and Khomeini, as we will see, did not always invoke the explicit phrases “commanding right” or “forbidding wrong.” They did, however, promote collective action instead of individual action of the kind that the goldsmith had taken.

Before performing the duty in the above capacity, our goldsmith consulted the sympathetic and authoritative ear of Abū Ḥanīfa (d. 767), one of the foremost scholars and jurists of his time for whom the Ḥanafī school of Sunni jurisprudence is named. Abū Ḥanīfa apparently agreed with the principle of Ibn Maymūn’s undertaking but objected to the practice of individual and collective violent rebellion

⁶⁵ Although the final clause about getting killed is generally omitted from this tradition’s transmissions, there is evidence that the goldsmith transmitted it in full. *Ibid.*, 6.

⁶⁶ *Ibid.*, 33.

⁶⁷ *Ibid.*, 34-35.

through the principle of commanding and forbidding. As Cook correctly argues, this early performance of individual self-sacrifice demonstrates a degree of autonomy in executing God's will. Nevertheless, Ibn Maymūn's action—however illustrative of autonomy—does not represent a serious collective endeavour to establish a new nation; the goldsmith knew he would die without effecting noteworthy change. Thus, commanding and forbidding in this instance remains confined to an ideal form of social ethics expressed through the tongue's strength instead of a serious expectation of political or even social change.⁶⁸

Because commanding right and forbidding wrong has a long history in Shi'ism, there is little need to trace its current Twelver iterations to Mu'tazilī or Ash'arī traditions, as is the case with *maṣlaḥa*. Suffice it to say that Mu'tazilī traditions of the duty were not completely assimilated into Twelver iterations, especially as they relate to the hand, tongue, and heart.⁶⁹ In Twelver expositions on the duty, as Cook explains, the period during which the Imams were present restricts its violent performance to the imam's commands. The sixth imam, Ja'far al-Ṣādiq (d. 765), defined the duty as a matter of “counselling the faithful and instructing the ignorant, but not of confronting someone with a whip or sword.” The latter should be used only when there is certainty of the ruler's surrender.⁷⁰ As such, from the eighth to the tenth centuries, the duty was mostly non-activist and non-violent.

In the subsequent “classical Imami” period during which the twelfth, and final, imam was in occultation (*ghayba*), commanding and forbidding was

⁶⁸ Ibid., 8-9.

⁶⁹ Ibid., 266.

⁷⁰ Ibid., 254-255.

subordinated to the Shi'i community's security and welfare in Iraq. *Taqiyya*, or religious dissimulation, thus became a more important principle while the duty to command and forbid was marginalised. There are nevertheless important considerations. In this era, we find a new arrangement for the three methods to command and forbid. The above discussions placed them from the hand to the tongue, to the heart. In the subsequent arrangement, the possibility for violence escalates.

For Ibn Ḥamza (c. 1171), one first must use one's heart, then proceed to the tongue, then to the hand, as opposed to the earlier reverse order. 'Allāma al-Ḥillī (d. 1325) agreed with this sequence but sees it as no more than a difference of semantics rather than substance.⁷¹ However, the principle of *kifāya* (sufficiency), which requires the duty's performance to the extent that it is sufficient for success, as Fadlallah and Khomeini defined it, might be based on this sequence.

There is also disagreement on the doctrine of violence. While Ibn Ḥamza required the imam's permission only to kill, others such as 'Allāma al-Ḥillī required it for all forms of violence when commanding and forbidding. Some also expand the authority of permission to an appointee. But almost all agree that there exists a doctrine of Imamate permission. In the same vein, the aforementioned Ṭūsī is said to have stated a popular position:

Other people [i.e. people other than the ruler] may only do this [i.e. have recourse to arms in the course of forbidding wrong] when there is no imam, nor anyone appointed by him; when there is one, no one should do this except under conditions of necessity.⁷²

⁷¹ Ibid., 263-265.

⁷² Ibid., 269.

Although most Muslim jurists agree on the above three methods, most contemporary Shi‘i believers prior to Khomeini abided by the restrictive doctrine on violence in the imam’s absence. Commanding and forbidding has, however, like *maṣlaḥa*, undergone a transformation in the second half of the twentieth century. It evolved into a significant concept for social and political action, meaning that it has transformed from an ethical ideal bound by doctrine and consensus into something unbound by theology with an ability to facilitate action. This is not to suggest that the duty was socially insignificant before, as the goldsmith’s story demonstrates, but instead that it was confined to facets of jurisprudence and ethics unconcerned with questions of sovereignty.

Cook’s discussion of the duty’s role in rebellion, reform, and protest ends with his contention that the concept has changed from a believer’s obligation in the pre-modern period to confront immediate injustices within his/her community to one that promotes the spread of Islamic values globally in the modern period.⁷³ As we will see, Fadlallah and Khomeini undoubtedly addressed the duty in various works to promote the adoption of ethics that bolster their political theories for a wide audience.

Cook also concludes that on its own, *ḥisba* “is precisely a practice for telling people what to believe and how to live—for imposing family values, not for enabling people to choose their lives”; the latter role he assigns to liberalism.⁷⁴ Thus, commanding and forbidding, for Cook, enables the authorship of good and bad behaviour in order to prevent the corruption of a community. But, as with Cook’s story about the long-tongued goldsmith, chapters one and three of this work show that

⁷³ Ibid., 515.

⁷⁴ Ibid., 514.

conceptions of the duty in the Islamic Republic confer on laymen a degree of authority and choice outside of and against liberal conventions. Chapter one explains how, with commanding and forbidding through self-sacrifice, first for revolution then for war, a citizen makes a conscious choice to give up his/her life. Chapter three then shows how the duty presents women with various but limited choices for their roles in society, including that of *mujtahida*.

Despite Cook's myriad sources and contexts for commanding and forbidding's performance, his explanation for its transformation in the modern period fails to endow the duty with any political significance. As a result, he also fails to explain its mass appeal in Islamist thought. For example, Cook's discussion of Khomeini confines the concept to the domain of theology and law as opposed to that of sovereignty and politics,⁷⁵ which, I argue, is exposed only by addressing the way in which commanding and forbidding and *maṣlaḥa* work together for the social and political services of the Islamic Republic. For Fadlallah, on the other hand, these cooperate to secure sovereignty outside of the traditional institutions of the state.

While Cook hints at *ḥisba*'s relationship to an undefined common good, he avoids an explanation of this relationship and any direct reference to *maṣlaḥa*. The present study fills this gap, arguing that the connection between *maṣlaḥa* and *ḥisba* is necessary for understanding modern Muslim thought insofar as their relationship illuminates the parameters of debate on political authority and appeal. Thus, that brief and little-known publication referenced above, *Amr bih ma'rūf va nahī az munkar az*

⁷⁵ Cook argues that Khomeini's writings on *ḥisba* promote opposition to corrupt religious institutions under the shah, as well as rebellion against tyranny, yet his discussion does not address how Khomeini transformed—or eschewed—*ahammiyya*. Cook, *Commanding Right and Forbidding Wrong*, 533-34.

dīdgāh-i Imām Khumaynī, single-handedly demonstrates the gap in scholarship by including *maṣlaḥa* as a key tenet of Khomeini's pronouncements on commanding and forbidding.

The ethics according to which members of a society live are also those according to which they might die. If one places one's own community above that of oneself, then martyrdom becomes possible, even if only because of a fantasy of existential threat for which self-sacrifice becomes necessary. It is this brand of self-sacrifice, in accordance with a set of ethical ideals, that makes sovereignty possible; a state cannot exist without those citizens or residents who are willing to die for its establishment and subsequent survival. The implication is that a state's welfare might, in certain cases, become the highest ethical ideal.

With Khomeini's call to command and forbid with violent self-sacrifice, he unexpectedly conferred a degree of authority on those who make the very choice to sacrifice. Paul Kahn's study on political theology corroborates that the personal choice to sacrifice oneself is a pillar of modern sovereignty.⁷⁶ These profoundly personal, yet collective choices also bolster communal authority. In fact, the idea that communal authority and self-governance are the prerogatives of ordinary men and women is presented in Khomeini's following statement from *Vilāyat-i faqīh*:

'The believing men and women are friends and protectors to each other; they enjoin the good and forbid the evil'... The reason for this is that enjoining the good and forbidding the evil means summoning people to Islam, which is a struggle to establish correct belief in the face of external opposition, while at

⁷⁶ Paul Kahn, *Political Theology: Four New Chapters on the Concept of Sovereignty* (New York: Columbia University Press, 2012), 22.

the same time vindicating the rights of the oppressed; opposing and struggling against oppressors within the community...⁷⁷

Fadlallah, however, was more concerned with self-governance outside of a state, not unlike Gandhi's *swaraj*, or self-rule, a comparison on which chapter one elaborates. Fadlallah, as such, mobilised commanding and forbidding in the service of a different vision of governing authority (or *wilāya*):

'The male believers and female believers are guides to each other, enjoying [sic] rights and forbidding evil'... we conclude that men and women believers endeavor to be each others' [sic] guides, protectors, helpers, lovers, and to be to each other all that *wilaya* is meant to be.⁷⁸

Perhaps, then, a state or community's welfare as the highest ethical ideal allows for *maṣlaḥa*'s modern implementation. But this does not do much to clarify the meaning of both concepts. With the following historical background on *maṣlaḥa*, the ethical and political boundaries between the two concepts might become less clear. One might go so far as to argue that it is impossible to establish well-defined ethical-social or political limits for the spheres in which *maṣlaḥa* and commanding and forbidding function. Nevertheless, differences abound.

What is Maṣlaḥa?

As with the above section, the following provides a background of key debates on *maṣlaḥa* to contextualise how Fadlallah and Khomeini's approaches were congruent with or diverged from such debates. To be sure, contention regarding *maṣlaḥa* is not a recent phenomenon. According to Felicitas Opwis, *maṣlaḥa* gained

⁷⁷ Ruh Allah Khumayni, *Islam and Revolution: Writings and Declarations of Imam Khomeini*, tr., Hamid Algar (Berkeley: Mizan Press, 1981), 109.

⁷⁸ Aziz clearly intends "enjoining" where he writes "enjoying." Aziz, "Fadlallah and the Remaking of the Marja'iyah," 209; Faḍlallah, *Ta'āmmulāt islāmiyya ḥawla al-mar'a*.

currency as a legal tool as early as the tenth century amidst discussions on an Islamic society's appropriate governance and diverging interests between religious and secular authorities in legal matters. At the time, there was hardly a clearly outlined method for its use.⁷⁹ Opwis also implies that commanding and forbidding along with *maṣlaḥa*, despite their different meanings and applications, were complementary tools for governing a community.⁸⁰ Eventually, *maṣlaḥa*'s methods were elucidated differently by various schools of thought (Mālikī, Ḥanafī, Ḥanbalī, Shāfi'ī, etc...) and further dependant on a particular jurist or scholar's approach. But unlike commanding and forbidding, which is defined as an obligation in the Qur'ān, *maṣlaḥa* developed as an extra-Qur'ānic legal tool. It was not a duty and remained mostly independent of revelation.⁸¹

During the medieval period a controversy arose regarding *maṣlaḥa*'s relationship to the foundational texts of the Qur'ān and the Sunna. Jurists questioned whether *maṣlaḥa* must take into account these sacred texts or whether the concept could be employed in the absence of textual evidence. Methods differed for employing *maṣlaḥa* based on the *sharī'a*'s boundaries. While a consensus was usually absent on whether these boundaries could justify a ruling on the common good (*maṣlaḥa* or *maṣlaḥa 'amma*),⁸² most jurists agreed that the common good must at least be taken into consideration in all cases.

⁷⁹ Felicitas Meta Maria Opwis, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Brill, 2010), 18.

⁸⁰ Ibid., 15.

⁸¹ Ibid., 326-27.

⁸² Takim argues, "Since the objective of the law (*maqṣad*) is in seeking the interest of the Muslim community, in the works on *uṣūl al-fiqh*, the principle of public good is also referred to as *al-maṣāliḥ al-mursala*, that is, in seeking the benefit of the people in the absence of textual evidence... Moreover, because the purpose of *maṣlaḥa*

One of the earliest systematic accounts of *maṣlaḥa* was authored by the Mu‘tazilī jurist, Abū Bakr Aḥmad bin ‘Alī al-Jaṣṣāṣ al-Rāzī (d. 980). He attributed to *maṣlaḥa* a divine quality that can help to reveal God’s law. Requiring textual knowledge—and thus divine wisdom—for assessing *maṣlaḥa*’s existence, he argued that *maṣlaḥa* must co-exist with a textual ruling; blind analogy (*qiyās*, i.e., making similar rulings based on previous ones) is disallowed because only God knows which rulings can be made.⁸³

For al-Jaṣṣāṣ, the logic of a law is based not on *maṣlaḥa* but rather on the textual characteristics of a ruling, that is, its concrete qualities. But he also argued that *maṣlaḥa* might also exist if *ijtihād* determines its probability in the case of the absence of definitive text in the Qur’ān. In other words, a clear judgement must exist in divine wisdom represented by text. Additionally, *maṣlaḥa* cannot function as a law-finding tool or as legal reasoning even though al-Jaṣṣāṣ allows for intellect to discern

(being or doing good) is discernible by reason, it has God’s approval too, because in Islamic theology, there is a correlation between reason and revelation in matters concerning the common good.” Takim, “Maqāṣid al-Sharī‘a in Contemporary Shi‘i Jurisprudence,” 107. Here I use Muhammad Qasim Zaman’s definition, the ‘common good’. Zaman argues that “the common good” is realised through the legal tool of *maṣlaḥa* but it “can, broadly speaking, be understood as the ‘common good’.” I would also add that “interest” and “public interest” ignore the ethical connotations that are expressed through the phrase “common good”. See Muhammad Qasim Zaman, “The ‘Ulama of Contemporary Islam,” in *Public Islam and the Common Good*, eds., Armando Salvatore and Dale F. Eickelman (Leiden and Boston: Brill, 2006), 129-156, at 131, as cited in Alexander Nachman, “*Maṣlaḥa* as Sovereignty: Fadlallah and Khomeini Compared,” *Middle East Law and Governance* 9, no. 1 (2017): 89-112, at 90. In the context of this study, the “common good” is more appropriate than *maṣlaḥa*’s more literal definitions of “public interest,” or simply “interest,” because Fadlallah attempted to create a public in Lebanon where there was arguably no discernable public, while providing a good that is not restricted to individual interest. His was an initiative for his community’s interest. Khomeini, on the other hand, transformed a public to create a new one and to redefine what *maṣlaḥa* means for the Islamic Republic, and how it would serve the state.

⁸³ Opwis, *Maṣlaḥa and the Purpose of the Law*, 28-29.

good and bad in legal issues. *Maṣlaḥa* is instead a reward for the obedient believer in the afterlife; it is a reason for performing legal obligations and abstaining from prohibitions instead of a reason for making a ruling. Since the ninth century, however, it was not uncommon for Mu‘tazilī theologians to make similar arguments: all of God’s actions lead to the benefit of his believers because he is all-knowing and just. All divine injunctions are therefore *maṣlaḥa*.⁸⁴

At the other end of the chronological spectrum of Mu‘tazilī approaches to *maṣlaḥa* is Abū al-Ḥusayn al-Baṣrī (d. 1044).⁸⁵ Originally ostracised by his Mu‘tazilī peers, al-Baṣrī’s thought found a resurgence nearly a century later and came to be recognised as the basis of the Bahshamiyya school, often recognised as the last school of Mu‘tazilī thought.⁸⁶ Like al-Jaṣṣāṣ, al-Baṣrī argued that only the revealed law can provide knowledge of legal *maṣlaḥas* and related issues. But al-Baṣrī further contended that this knowledge is acquired through recognition of non-apparent textual qualities, such as indicators (*adilla*), signs (*amārāt*), occasions (*asbāb*), legal reasonings (*‘ilal*), and conditions (*shurūṭ*).⁸⁷

⁸⁴ Ibid., 29-31.

⁸⁵ The Mu‘tazilī school experienced a decline after the eleventh century and mostly disappeared after the thirteenth century. Some have argued that there has been a “neo-Mu‘tazilī” revival in the twentieth century. See Nassima Neggaz, “Mu‘tazilis,” in *The Princeton Encyclopedia of Islamic Political Thought*, 383-384. On the so-called Mu‘tazilī revival, see Richard C. Martin and Mark R. Woodward with Dwi S. Atmaja, *Reason in Islam: Mu‘tazilism from Medieval School to Modern Symbol* (Oxford: Oneworld Publications, 1997), 128-138.

⁸⁶ See Wilferd Madelung and Sabine Schmidtke, *Rational Theology in Interfaith Communication: Abu l-Ḥusayn al-Baṣrī’s Mu‘tazilī Theology among the Karaites in the Faṭimid Age* (Leiden and Boston: Brill, 2006). According to Madelung and Schmidtke, little detail exists about the reasons for al-Baṣrī’s controversy but there is evidence that al-Baṣrī was ostracised in part because of disagreement about his rationale for his proof for God’s existence.

⁸⁷ Opwis, *Maṣlaḥa and the Purpose of the Law*, 35.

For al-Baṣrī, *maṣlaḥa* is related to the believer's reward in the afterlife but it is not *the* reward. Similar to al-Jaṣṣāṣ, al-Baṣrī defined *maṣlaḥa* as a product of divine rulings instead of the performance of legal obligations and the abstinence of prohibitions. Unlike al-Jaṣṣāṣ, however, he equated *maṣlaḥa* with knowledge. This knowledge is neither concrete knowledge of text nor of fact but instead of God's grace, which encourages obedience to divine law. Al-Baṣrī's interpretation of *maṣlaḥa* is, in fact, directly related to commanding and forbidding, albeit in an apolitical context, which he associated with action and reward. Opwis argues the following:

Al-Baṣrī explains that God does so in that His command (*amr*) is an incentive for action in the same way that prohibition (*nahy*) prompts a person to omit that act. Taken together, command and prohibition, when obeyed, result in reward and this act of compliance constitutes *maṣlaḥa*. Al-Baṣrī, however, rejects understanding *maṣlaḥa* as the purpose (*gharaḍ*) of the believer's compliance with God's rulings.⁸⁸

The opposing school of Ash'arī jurists, however, promoted *qiyās* in unprecedented cases eventually to apply *maṣlaḥa* as a law-finding tool. This is partially because most Ash'arī jurists rejected the possibility of legal knowledge outside of God's law and word (the Qur'ān), which they interpreted literally. Unlike their Mu'tazilī opposition who argued that God possesses no human-like attributes, that He preceeded his own speech—found in the Qur'ān—and that He endowed humans with free will to perform good or evil acts, Ash'arīs understood Qur'ānic descriptions of God's attributes differently and defined the Qur'ān as co-eternal with God himself.

⁸⁸ Ibid., 36.

But like the Mu‘tazila, Ash‘arī jurists also used reason, arguing that their more-literal interpretations can be assessed rationally. According to the subsequently mentioned al-Ghazālī, for example, if the Qur’ān describes God’s hand with which He gives and takes, then it is referring to His ability to deliver justice. While God’s hand does not occupy space, it gives and takes, therefore serving as a link between the divine hand and the human hand.⁸⁹ Generally for the Mu‘tazila, such as Faḍlallah Astarābādī (d. 1339), God’s attributes do not subsist in Him but are instead part of His essence—His oneness—as, for example, power, knowledge, and justice.⁹⁰ Ash‘arī concern with religious law and their suspicion of man-made law, however, motivated their attempt to develop a methodology for *maṣlaḥa* that could address all human experience.⁹¹

Among *maṣlaḥa*’s most important theorists within the Ash‘arī milieu was the jurist and philosopher, Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazālī (d. 1111). Al-Ghazālī defined *maṣlaḥa* as “the preservation of the maqāṣid of the law.”⁹² He subsumed all legal and ethical considerations into one concept. In other words, the law should prevent what is harmful and promote what is beneficial in this world and the next. For al-Ghazālī, however, these goals (*maqāṣid*) were unable to override

⁸⁹ Frank Griffel, “Ibn Taymiyya and His Ash‘arite Opponents on Reason and Revelation: Similarities, Differences, and a Vicious Circle,” *The Muslim World* 108 (January 2018): 11-39, at 12.

⁹⁰ Robert Gleave, *Scripturalist Islam: The History and Doctrines of the Akhbārī Shī‘ī School* (Leiden and Boston: Brill, 2007), 110-111.

⁹¹ *Ibid.*, 41-42.

⁹² Muhammad Khalid Masud, *Shātibī’s Philosophy of Islamic Law* (Kuala Lumpur: Islamic Book Trust, 2000), 139.

clear textual rules,⁹³ a provision that Khomeini and Fadlallah would reject in different ways.

Fakhr al-Dīn al-Rāzī (d. 1210), another Ash‘arī scholar, contra al-Jaṣṣāṣ and al-Baṣrī, promoted *maṣlaḥa*’s use as legal reasoning based only on probability that the ruling in question is a legitimate one. This relates to making rulings on divine aspects of *maṣlaḥa*, which can only be made according to their “suitability” because God’s apparent rulings (found in the Qur’ān and Sunna) only relate to concrete, that is, material *maṣāliḥ*.⁹⁴ Some Mu‘tazilī jurists also held this position but al-Rāzī argued that he differed from the others because he refuted God’s limits on making rulings that are *maṣlaḥa*. He argued instead that God is not limited to making such rulings but decides to do so.⁹⁵

Later, with Abū Ishāq al-Shāṭibī (d. 1388), *maṣlaḥa* underwent a more comprehensive methodological elaboration. He based his method on an “inductive” approach, incorporating reason and revelation by which a jurist would survey all available sources in the Qur’ān and Sunna to make a judgement that provides the greatest benefit to life, property, mind, progeny and religion (in that very hierarchy).⁹⁶ Al-Shāṭibī’s method was different from his predecessors by defining *maṣlaḥa* for humankind as the basis for all divine law.

⁹³ Sami Zubaida, *Law and Power in the Islamic World* (London: I.B. Taurus, 2003), 15.

⁹⁴ Opwis, *Maṣlaḥa and the Purpose of the Law*, 116-118.

⁹⁵ *Ibid.*, 116.

⁹⁶ *Ibid.*, 15.

Between the early-modern and modern periods, *maṣlaḥa* once again faced scrutiny and methodological reform. Shāh Walī Allāh (d. 1762) of India affirmed the benefits of worship (*‘ibādāt*) to worldly matters, arguing that rituals are not simply tests by which believers prove themselves to God. These rituals are also directly related to *maṣlaḥa*.⁹⁷ Later, the Egyptian scholar and reformist, Rashīd Riḍā (d. 1935), referred back to the Hanbali scholar, Najm al-Dīn al-Ṭūfī’s (d. 1316) treatise on *maṣlaḥa* to prioritise the principle, “the injurious is to be warded off and the beneficial preserved.” Both Riḍā and al-Ṭūfī, against Walī Allāh, addressed in different contexts the possibility of corrupt leaders using *maṣlaḥa* for political gain, arguing that the concept must be bound to the law and limited only to matters of human interaction (*mu‘āmalāt*). Riḍā advocated specifically for those scholars who “loosen and bind” the law to keep in check the potential tyranny of rulers.⁹⁸ It is important to note, however, that before the twentieth century, Shi‘i jurists mostly avoided discussions on *maṣlaḥa*, a condition that changed with Khomeini’s theory of governance and with the legal debates that proceeded from the establishment of the Islamic Republic’s earliest institutions, eventually resulting in the most radical re-imaginings of *maṣlaḥa* as a tool of sovereignty.⁹⁹

After the early-modern period, *maṣlaḥa* eventually came to resemble the Roman legal principle of *res publica*, stipulating that a ruling should neither be limited by its applicability to a given context nor used to legitimise *ad hoc* rulings.

⁹⁷ Muhammad Qasim Zaman, *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism* (New York: Cambridge University Press, 2012), 109-12.

⁹⁸ *Ibid.*, 111-12.

⁹⁹ See Takim, “Maqāṣid al-Sharī‘a in Contemporary Shi‘i Jurisprudence”; Sādiq Ḥaqīqat, “Naqsh-i maṣlaḥat dar ḥukūmat-i islāmī az dīdgāh-i Imām Khumaynī,” *Sayyid Sadegh Haghghat*. URL: <http://www.s-haghghat.ir/fa/articles/view/486/1>.

Instead, each legal decision should address a greater or common good.¹⁰⁰ Like *res publica*, the boundaries of *maṣlaḥa*'s application may have once been an obstacle to a ruler's personal desires, as it was both a legal-rational tool and one within the jurisdiction of jurists.¹⁰¹ It is important to note, however, that "rational" by no means refers to an enlightenment form of rationality. Instead, I use it to refer to a tool with well-theorised—if not always clear—methods and one whose use requires careful investigation.¹⁰²

To be sure, as Salvatore argues, if *maṣlaḥa* is defined as the common good, then it should in no way be equated to liberal conceptions of the common good for which a single decision might prioritise the greatest happiness and the wellbeing of the greatest number. And, furthermore, unlike Bentham's principle of utility, *maṣlaḥa* also includes man's relationship with God and does not always involve the direct

¹⁰⁰ Armando Salvatore, *The Public Sphere: Liberal Modernity, Catholicism, Islam* (New York: Palgrave Macmillan, 2007), 157.

¹⁰¹ *Ibid.*, 157-158.

¹⁰² A note on the term "rational" in modern historiography: Skinner argues that beliefs, even if false by today's standards, should be measured against their contemporary standards of reason, asking whether they are consistent with the bearer's other beliefs or worldview. "False beliefs," as judged by the modern historian, should be judged false not because of what we know today but because of an inconsistency in the believer's worldview. See Quentin Skinner, *Visions of Politics Volume 1: Regarding Method* (Cambridge: Cambridge University Press, 2002), 30-36; Alireza Doostdar, on the other hand, argues that far from being an objective category either within a material-scientific world or outside of it, rationality is useful in demonstrating "historical connection and contingency" between "Islam" and "the West"—through, for example, Greek philosophy. Even without a common history, examining rationality as a historical process through which diverse beliefs and practices are linked allows for a better understanding of how individuals or groups make sense of the world and function within it. Alireza Doostdar, *The Iranian Metaphysicals: Explorations in Science, Islam, and the Uncanny* (Princeton: Princeton University Press, 2018), 14-18. While I am mostly unconcerned with exploring instances of Fadlallah and Khomeini's methods of "rationalising," chapter two involves an exploration of how metaphysics—specifically in relation to the Messiah—is a crucial to critiques of Enlightenment rationality while maintaining its own brand(s) of rationality in modern global political thought.

impact of private action on public welfare, or vice versa.¹⁰³ *Maṣlaḥa* is therefore a legal tool with diverse yet well-outlined methods according to different scholars. Nevertheless, “[i]t appears,” according to Salvatore, “not only less text bound and more context friendly than other methods, but also based on a view of the common good emancipated from the fictitious, fragile, and largely arbitrary view of consensus that prevails at any given time.” To make matters murkier, *maṣlaḥa* is “never identified with a particularistic good.”¹⁰⁴

Theoretically speaking, *maṣlaḥa* is quite different from the legal distinction of *ḍarūra*, meaning necessity. Even if they both allow for the omission of Islamic precepts, *maṣlaḥa* traditionally does not connote necessity, nor is it mandatory to act upon once a “good” or “interest” is determined, although in some cases it might be. *Maṣlaḥa* is, simply put, a tool for assessing legal distinctions—among which *ḍarūra* can be included—rather than for defining legal obligations. Practically, however, as Khomeini and Fadlallah use it, *maṣlaḥa* is not dramatically different from *ḍarūra*. *Maṣlaḥa* for Fadlallah and Khomeini enables political survival through legal mechanisms but, as will be addressed, it has a less-clear and more-contentious methodology than *ḍarūra*. This is not to argue that there is complete consensus on *ḍarūra* but instead that the literature and debates are clearer. It is indeed arguable that the textual and political history—rather than methodological appeal—enabled positions taken with *maṣlaḥa* where these positions would not have been possible or as effective with *ḍarūra*.

¹⁰³ Jeremy Bentham explains, “By the principle of utility is meant that principle which approves or disapproves of every action whatsoever... I say of every action whatsoever, and therefore not only of every action of a private individual, but of every measure of government.” Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1907), 2.

¹⁰⁴ Salvatore, *The Public Sphere*, 158.

In other words, *maṣlaḥa* is elusive in application and meaning. As Opwis implies, this elusiveness is perhaps owing to—or a result of—the historical controversy on how *maṣlaḥa* is derived as an opposite to corruption (*mafsada*) and the intellect’s ability to ascertain truth and falsehood in relation to these opposites.¹⁰⁵ The concept’s elusiveness has continued into the modern period; this quality is discussed throughout this study. In any case, *maṣlaḥa* was historically mobilised by a clerical milieu in order to serve the interests of a community, both by seeking a common good in legal and extra-legal matters and by holding temporal powers to political principles.

Coupled with *maṣlaḥa*’s relatively recent emergence in Shi‘ism, there is a stunning deficiency in English language research on *maṣlaḥa* in Shi‘i thought. Zubaida’s *Law and Power* contains a rigorous engagement with *maṣlaḥa*’s role in the Islamic Republic and corroborates some of the arguments in this dissertation. His discussion of *maṣlaḥa* focuses mostly on the post-1988 period and provides valuable insights into the Expediency Council’s significance. Liyakat Takim’s excellent study, on the other hand, addresses *maṣlaḥa* throughout a wider corpus and modern history of Shi‘i jurisprudence. Both Takim and Zubaida accept that the Expediency Council’s establishment was a watershed moment in Shi‘i legal theory, Islamic history, and the Islamic Republic’s history. Armando Salvatore, Muhammad Khalid Masud, Martin van Bruinessen, Dale F. Eickelman, Muhammad Qasim Zaman, and Felicitas Opwis,¹⁰⁶ on the other hand, are less concerned with the Islamic Republic and Shi‘i

¹⁰⁵ Opwis, *Maṣlaḥa and the Purpose of the Law*, 191-192.

¹⁰⁶ Muhammad Khalid Masud, Armando Salvatore and Martin van Bruinessen, eds., *Islam and Modernity: Key Issues and Debates* (Edinburgh: Edinburgh University

jurisprudence, dealing instead with the common good in the colonial and post-colonial public sphere—as with Salvatore—or with the history of *maṣlaḥa* in Sunni jurisprudence—as with Opwis.¹⁰⁷

Sadegh Haghghat and Sa‘id Hajjarian are among the best-known Iranian theorists of *maṣlaḥa*’s contemporary iterations in the Islamic Republic. Hajjarian interprets *maṣlaḥa* as the secularisation (*‘urfī shudan*) of law, sometimes termed customarisation. According to Hajjarian, the Islamic Republic’s attempts to codify or institutionalise divine law necessitated conflict and compromise with challenges of everyday, earthly, life; issues in earthly life, like taxation, inheritance, and marriage are generally what customary law addresses. First a conflict, then a compromise, aspects of the *sharī‘a* are implemented, according to Hajjarian, by considering these challenges and contingencies in order to serve both the state and the nation. But Hajjarian constitutes *maṣlaḥa* first and foremost in the service of the nation, not a state, on whom the *valī-yi faqīh* depends for legitimacy.¹⁰⁸

Haghghat, a less politically polarising figure than Hajjarian who later suffered an assassination attempt in 2000, interprets *maṣlaḥa* as the secularisation of Islamic jurisprudence in much the same way as law works in the West. For Haghghat, law is always subject to human intellect, error, and experience, no matter the theological claims entailed. He distinguishes this type of secularisation from secularism—the

Press, 2009); Armando Salvatore and Dale F. Eickelman, eds., *Public Islam and the Common Good* (Leiden and Boston: Brill, 2004).

¹⁰⁷ Takim, “Maqāṣid al-Sharī‘a in Contemporary Shi‘i Jurisprudence,” 112-113. Takim addresses this dearth of scholarship on how Shi‘i jurists arrive at their rulings on *maṣlaḥa*. Ibid., 122; Zubaída, *Law and Power*, 3, 15-16, and 210-219.

¹⁰⁸ Sa‘id Hajjaryān, “‘Urfī shudānī dīn dar sipīhr-i siyāsāt,” *Bāztāb-i andīsha* 19 (6 October 2001): 26-34.

latter, he contends, is a liberal idea—explaining that Shi‘ism’s secularisation without secularism enables new ways of expressing law’s implementation in the Islamic Republic. Although Haghghat concedes that his explanation appears ambiguous, he argues that this ambiguity is in fact a strength.¹⁰⁹

Maṣlaḥa’s emergence as an essential principle for the Islamic Republic has in other words facilitated the concept’s evolution into a supremely political, as opposed to social or legal, tool. It is a response to an existential crisis of governance, which, as I argue in chapter one, bears some resemblance to Derrida’s “supplement,” defined by Derrida as a part added to a whole in order to complete the whole.¹¹⁰ Understanding *maṣlaḥa* in this way might clarify why such an absent concept in Shi‘i thought gained currency. For the supplement, Derrida explains, is a means by which presence during a crisis might maintain its existence through certain measures. Although Derrida’s concern was with how human existence maintains itself through writing as existence’s imperfect manifestation, Khomeini attempted to maintain political existence by supplementing an imperfect form of the *sharī‘a* as state law with an important yet marginal legal concept, later to be institutionalised in the Expediency Council. Both Derrida and Khomeini, however, responded similarly to their respective existential crises during the Cold War and a period of rising political ideologies (c. 1967 in France for Derrida; and the 1960s-70s in Iran, and again in 1988-89, for Khomeini).¹¹¹

¹⁰⁹ Ḥaqīqat, “Naqsh-i maṣlaḥat dar ḥukūmat-i islāmī.”

¹¹⁰ Jacques Derrida, *Of Grammatology*, tr., Gayatri Spivak (Johns Hopkins University Press, 1976).

¹¹¹ Derrida’s *Of Grammatology* was published in 1967 while Khomeini’s *Vilāyat-i faqīh* was published officially in 1970, though debates concerning law (the *sharī‘a* and the constitution) and *maṣlaḥa* in the Islamic Republic occurred primarily in the early 1980s.

As such, *maṣlaḥa* as a tool for good governance is not unlike Derrida's philosophical response to the history of Western metaphysics in which he addressed the limits of presence. This connection allows for a broader understanding of how a defence of existence through both law and governance might take form. In other words, *maṣlaḥa* was transformed from a purely legalistic concept into what Derrida might define as a "supplement" of existence, meaning the concept—along with the current Expediency Council—appears to function at the margins of government in the Islamic Republic and is not invoked as a primary ordinance of law, yet the state cannot function without it.

Commanding and forbidding and *maṣlaḥa* are, in some ways, both ethical tools with different applications. The former provides guidance for securing an ethically sound life while the latter ensures the common good as the utmost ethical consideration in political decision-making. Although commanding and forbidding should, according to Fadlallah and Khomeini, be incorporated into considerations of governance (as addressed in chapter four) and in formulations of *maṣlaḥa*, its role is primarily in the social realm. *Maṣlaḥa*, on the other hand, is used primarily for legal-political, state, or government decisions. The two, however, do not remain within strict boundaries between the social/ethical or political realms. How, then, might a comparative study on Fadlallah and Khomeini's visions of these two concepts be possible?

Methodology

In his essay, "What is Comparative Political Theory?," Andrew March

establishes two essential criteria for comparing intellectuals and/or texts across time and space: the first is that they must have antecedents in religious doctrine.¹¹² The second, they must possess a degree of orthodoxy.¹¹³ In other words, intellectuals dealing with religious doctrine and discourse, like Fadlallah and Khomeini, set intentional or unintentional boundaries between traditions of thought. Despite both being Shi‘i jurists, Khomeini and Fadlallah represent geographical and intellectual diversity within Shi‘i thought, exemplifying numerous boundaries in Shi‘i intellectual history. The boundaries within what March terms “religious thought” adumbrate differences that allow Western scholars to pose questions without laying claim to aspects of “foreign” traditions; claiming ownership, in other words, is much more difficult if the traditions are religious than if they are non-religious. But, more significant than avoiding claims of ownership, the differences within currents of thought also demonstrate different perspectives on questions affecting their communities, such as public-private spheres, women and gender, as well as state and good governance.

As for their orthodoxy, the intellectuals in question must command authority within their community or resonate beyond time and space, as Fadlallah and Khomeini do. Although both command authority, Khomeini established a standard and paradigm against which all subsequent iterations of Islamic sovereignty had to be measured. The current study uses March’s two basic criteria, with an added dimension that engages with thinkers from traditions outside of Islam and the Middle East to show, without claiming ownership, that there exist coinciding global

¹¹² Andrew F. March, “What Is Comparative Political Theory?,” *The Review of Politics* 71, no. 4 (2009): 531–565, esp. 552.

¹¹³ *Ibid.*, 556.

intellectual currents. In other words, trends in intellectual history do not develop in isolation and often correspond despite differences.

Along with demonstrating the significance and intimacy of *maṣlaḥa* and commanding and forbidding, a corollary of this study is that Khomeini and Fadlallah asked similar questions that some of their twentieth-century contemporaries in the West asked. This is an example of “weltzeit (world time),” a term that Reinhard Schulze borrows from Wolfram Eberhard to explain how the Islamic world experienced the same epoch-making contexts as countries in the West. These contexts include historical changes from the Enlightenment to the Cold War, and it is therefore “meaningless” to compare “the history of Egypt in the 20th century with that of France in the 17th.”¹¹⁴

As Charles Kurzman demonstrates, world time is a consistent feature of global history. In his chapter, “Mashrutiyyat, Meṣrutiyyet, and Beyond: Intellectuals and the Constitutional Revolution of 1905-12,” Kurzman shows that Iran’s Constitutional Revolution (1906-1911) occurred in the context of other similar movements, including the Russian Revolution (1905), the Second Ottoman Constitutional Revolution (1908), the Portuguese Revolution (1910), the Mexican Revolution (1910-11), and the Chinese Revolution (1911-12).¹¹⁵ Furthermore, Iranian intellectuals were well aware of these parallels and wrote about them.¹¹⁶ It should not come as a surprise then, as various countries witnessed new forms of republican revolutions in the mid-

¹¹⁴ Schulze, *A Modern History*, 3.

¹¹⁵ Charles Kurzman, “Mashrutiyyat, Meṣrutiyyet, and Beyond: Intellectuals and the Constitutional Revolution of 1905-12,” in *Iran’s Constitutional Revolution: Popular Politics, Cultural Transformations and Transnational Connections*, eds., H. E. Chehabi and Vanessa Martin (London: I.B. Taurus, 2010), 277-290, at 278.

¹¹⁶ *Ibid.*, 279.

nineteenth century and constitutional revolutions in the early-twentieth century, so too did political theorists from various backgrounds address new questions of sovereignty and political action following the withdrawal of colonial powers from the Third World and during the Cold War.

Indeed, Khomeini's revolutionary thought and the Iranian Revolution represent the culmination of visions of Islamic sovereignty, owing much to those like Sayyid Quṭb, Syed Abū al-A'la Mawdūdī, Muḥammad Iqbāl, and others.¹¹⁷ At the same time, the Iranian Revolution is a paradigmatic twentieth-century social revolution, among the Cuban, Ethiopian, and Nicaraguan revolutions.¹¹⁸ Despite his vehement animosity toward Marxism and Marxist revolutionaries, Khomeini, as we will see, espoused similar concerns for social justice and services as some socialist revolutionaries. Both parties formulated ideas for state institutions that might provide these services. Fadlallah also promoted a vision not unlike other intellectuals who combatted colonialism. While his position on minorities resembles that of Gandhi—a position, it should be noted, that appears to have attracted attention from Lebanese Shi'ī in recent years¹¹⁹—his resistance to racism and imperialism has also been compared to that of Franz Fanon.¹²⁰

¹¹⁷ Jan-Peter Hartung has shown the influence and intimacy of Mawdūdī on Quṭb, demonstrating the possibility (not certainty) that the latter read much of the former's writings and even modelled his own on some of Mawdūdī's, with variations. Khomeini, Hartung also argues, was shaped by these ideas and was well aware of Quṭb and Mawdūdī's ideas. Jan-Peter Hartung, *A System of Life: Mawdudi and the Ideologisation of Islam* (Oxford: Oxford University Press, 2014), 2-1, and 194-95.

¹¹⁸ Jeff Goodwin and Theda Skocpol, "Explaining Revolutions in the Contemporary Third World," *Politics Society* 17, (1989): 489-509.

¹¹⁹ Faisal Devji, "Al-nizām al-ṭibqī fī al-Hind bayn al-ams wa-l-yawm wa-mādhā qāla al-mahātmā?," *Al-Mayādīn* (1 May 2016). URL:

<http://www.almayadeen.net/episodes/723010>.

¹²⁰ Abu Rabi', *Intellectual Resurgence*, 235.

Proving whether Derrida's supplement and Khomeini's *maṣlaḥa* are derived from one or the other, or that Fadlallah's formulation of commanding and forbidding is based on Gandhi's *swaraj*, through which the latter promoted a nation's self-governance outside of and against the colonial state, is less important than showing the value of drawing parallels between answers to similar crises. As Siep Stuurman has argued, the global might be possible not because of a direct connection between concepts but precisely because a direct connection is lacking.¹²¹ This is not to discount the importance of different contexts, rhetoric, or intention, but instead to argue that Khomeini and Fadlallah's ideas did not develop only from Islamic tradition but were also subject—like all ideas—to global historical changes.

Taking the above into consideration, my sources include a wide variety of genre such as *fiqh*, political treatises, news articles, and speeches. While I do address in many of the following discussions the intended audience of a publication or speech, as well as the context surrounding its publication or production, some might critique the following for textual heterogeneity and ignoring the specific details of contexts. It is true of course that each work and word have its own intention, audience, and context; where significant I explain these. I argue, however, that taking a holistic approach to Fadlallah and Khomeini's works and words—understanding all of these as political acts—not only reveals the relationship between the ideas conveyed through different genres but also demonstrates how genres relate to one another.

¹²¹ Siep Stuurman, "Common Humanity and Cultural Difference on the Sedentary-Nomadic Frontier: Herodotus, Sima Qian, and Ibn Khaldun," in *Global Intellectual History*, eds., Samuel Moyn and Andrew Sartori (New York: Columbia University Press, 2015), 33-58. Although Stuurman implies the possibility of a pre-modern global intellectual history, Moyn and Sartori leave the question open. See Moyn and Sartori, "Approaches to Global Intellectual History," in *Global Intellectual History*, 3-30, at 5.

Showing, for example, the consistency (or inconsistency) between *fiqh* and speeches or political treatises de-mystifies the sometimes-tedious or ambiguous explanations found in jurisprudence. Doing so demonstrates the intimacy between word and action—if one can define a clear difference between the two—as well as theory and practice.

But discerning context and intent can only go so far before preventing the possibility of comparison; to elucidate every contextual and intentional detail would be to differentiate them completely from any other context or intention. Comparing and contrasting ideas in different contexts and sources allows for, in other words, local histories to be deracinated and turned into global ones preventing—as March might argue—ownership of certain values that are often associated with specific contexts, cultures, and geographies.

The goal of this work is not to determine the precise antecedents of Fadlallah and Khomeini's *maṣlaḥa* and *ḥisba*—though some genealogy is drawn—and, as such, the intention is neither to write a modern intellectual history of these two concepts. Additionally, this study is not a chronological one. It is instead a thematic one. The placement of Fadlallah's ideas before Khomeini's or vice versa is mostly for stylistic or rhetorical purposes. My intention is to consider *ḥisba* and *maṣlaḥa* as ethical and political tools that experienced new life with these two thinkers, and the ways in which these tools were mobilised. However, lacking a clear consensus on definition, method, or precedence, how are we to discern *maṣlaḥa* and *ḥisba*'s applications?

Borrowing from Carl Schmitt's *The Concept of the Political*¹²² I would like to argue the following: if *maṣlaḥa* and commanding and forbidding are at all political and ethical, as this work shows, then in order to arrive at a correct understanding of the concepts we must also understand how their meanings have been authored by those in power and used against political opponents, in this case, Fadlallah's use versus that of Khomeini, who responded to one another, sometimes directly but often indirectly.

Perhaps the most significant theme traversing Khomeini and Fadlallah's ideas on *maṣlaḥa* and *ḥisba* is that of sovereignty. While the fourth chapter engages in an explicit discussion of sovereignty as good governance and state, a major assertion of this work is that sovereignty as good governance and state is impossible—at least for Fadlallah and Khomeini—without also addressing law, public and private spheres, and women. This is perhaps the reason why, as I ascertain, *maṣlaḥa* and *ḥisba* are most prominent in Fadlallah and Khomeini's approaches to the following chapters' themes. These themes appear to constitute the most contested sites—though not the sole sites—in which these concepts are used to promote sovereignty.

Just as law determines how the public and private spheres are distinguished in a state and traversed by its citizens, both law and the public-private distinction relate to how women operate within and in relation to a citizenry and state law.

Furthermore, the ways in which these issues are related constitute how all citizens

¹²² According to Schmitt, “any distinction that can serve as a marker of collective identity and difference will acquire political quality if it has the power, in a concrete situation, to sort people into two opposing groups that are willing, if necessary, to fight against each other.” Carl Schmitt, *The Concept of the Political*, tr., George Schwab (Chicago: University of Chicago Press, 2007), 37-38.

interact with the state and vice versa. This is not to argue that other facets, such as the military, the economy, the youth, or minorities are unimportant, but instead that nearly every issue dovetails into the main themes with which these chapters engage. But the present study is not a social history. It is an intellectual history, a study of how two authorities formulated the relationship between the subsequent political themes. As such, because of the following thematic structure and despite synthesising into a final conclusion on Fadlallah and Khomeini's sovereignties, each chapter might also be read as a separate study.

The current work makes two important contributions to the field of Islamic intellectual history. First, it demonstrates the intimacy of *ḥisba* and *maṣlaḥa* where they have never before been discussed together. Demonstrating this intimacy is important because jurists and scholars in the Islamic world acknowledge the relationship between these two concepts, yet, it has largely been ignored in English-language scholarship. Showing the relationship between *ḥisba* and *maṣlaḥa* illustrates not only the ways in which they interact but also clarifies their separate applications and limits. Second, this thesis engages with these two concepts through formulations of sovereignty. Examining the following perspectives of how sovereign authority functions, and through which issues of authority are contested, allows for a novel and theoretical approach to state. Instead of discussing specific institutions and structures—or viewing all issues through the functions of the state or ruler—the following considers how law in the social realm, definitions of the public and private spheres, women, and finally the state itself can constitute critical sites of authority on which theories of sovereignty focus.

Structure

Chapter One: The Language of *Ḥisba* and *Maṣlaḥa* in Khomeini and Fadlallah's Political Thought

My first chapter defines the basic roles of *ḥisba* and *maṣlaḥa* in Khomeini and Fadlallah's political thought. The goal will be first to investigate *ḥisba* and *maṣlaḥa* separately in order to understand how the two clerics established the parameters of debate on both concepts. To be sure, Khomeini transformed both concepts most dramatically, the effects of which Fadlallah was well aware, and to which he responded. After the two sections in which *ḥisba* and *maṣlaḥa* are separately discussed, the third and final section explains why it is important to consider *ḥisba* and *maṣlaḥa* as twinned concepts in modern Islamic political thought, arguing that they epitomise ethics and politics, which on the one hand are most appealing to the political public when used together, and on the other hand, legitimise each other.¹²³

Chapter Two: Messianism and The Public-Private Distinction

Chapter two shows the importance of esoteric politics for Fadlallah and Khomeini's formulations of *maṣlaḥa* and *ḥisba*, particularly as these concepts relate to law's theoretisation for the public and private spheres. This is significant because public and private spheres are crucial for any formulation of society-state relations. Understanding the politics of the public and private, particularly how they are conceived, is thus necessary for an understanding of sovereignty.

¹²³ Sections of chapter one have appeared, or will appear, in Alexander Nachman, "To Loosen and Bind: Khomeini, Rafsanjani, and Supplementary Governance in the Islamic Republic," *British Journal of Middle Eastern Studies* (ahead of print). DOI: <https://doi.org/10.1080/13530194.2018.1509691>; also in Alexander Nachman, "Outside of the Law: Khomeini's Legacy of Commanding Right and Forbidding Wrong in the Islamic Republic," *Sociology of Islam* 7, no. 1 (2019): 1-21.

This chapter continues with chapter one’s argument: that Khomeini and Fadlallah conceived of *ḥisba* and *maṣlaḥa* as fundamental and twinned components of law and authority in Islam. It adds that the concept of the Messiah, who will establish perfectly just government upon his arrival, was crucial for Khomeini and Fadlallah’s understanding of law’s impact on private and public life. Messianism’s centrality to the history of law and its formulation has been attested. Giorgio Agamben (b. 1942), for example, in his essay “The Messiah and the Sovereign,” argued that “messianism represents the point of greatest proximity between religion and philosophy” because religion confronts law through the Messiah, on the one hand, and philosophy is involved with confronting law on the other. Shi‘ism, according to Agamben, along with Judaism and Christianity, has “always tried in every possible way to control and reduce the essential messianic properties of religion and philosophy, without ever fully succeeding.”

Both Khomeini and Fadlallah endeavoured in different ways to control the messianic properties of religion and philosophy—properties which are often ambiguous and vague—by circumscribing the public and private spheres. The public and private are fashioned in all societies to different extents by ethics and politics, which are emblematised in this study by *ḥisba* and *maṣlaḥa*. Conceiving of the public and private in different ways, I argue, allowed Khomeini and Fadlallah to take up innovative methods of promoting and contesting politics. Doing so, they re-imagined religion’s role in political action.

Chapter Three: *Ḥisba* and *Maṣlaḥa* Author Gender

The third chapter deals with the implications of the first two chapters for members of Fadlallah and Khomeini's political communities, specifically women. This chapter examines how family and gender are essential for constituting sovereignty and maximising *maṣlaḥa*. In the context of Lebanon's precarious politics during and after the Civil War, I address how Fadlallah authored *maṣlaḥa* through *ḥisba* in order to restructure debates within the *marja'iyya* (specifically against Khomeini) concerning family, and women in particular. Departing from his teacher, Ayatullah Abū al-Qāsim al-Khū'ī, Fadlallah emphasised women's participation in providing a common good by writing against tradition and *ijmā'* (consensus among Muslims), while specifically invoking *ḥisba*. Similarly, Khomeini called for women to participate in revolution and politics alongside men in the public sphere, exemplified by his speeches and declarations. I will argue this using, in part, the influence of Aristotle's ideas on politics, family, and gender on Shi'i jurisprudence in the seminary.

Vanessa Martin argues that according to Islamic philosophy, "which derived from the Greeks, man can only attain felicity and flourish to the fullest extent in a community in which full cooperation in pursuit of the common good exists," a value which she attributes in part to Aristotle's *Ethics*.¹²⁴ In chapter one, the relationship between Fadlallah and Khomeini's ethics and politics was explained in depth. But if we consider the importance of politics to ethics, we must also take into account Aristotle's volume on *Politics* in which he constitutes the family as the smallest political unit determined by the power dynamics between men and women.¹²⁵ While

¹²⁴ Martin, *Creating an Islamic State*, 34-35.

¹²⁵ Aristotle, "Politics," in *The Complete Works of Aristotle* vol. 2, bk. 1, ch. 1 and 3., tr. Benjamin Jowett, ed., Jonathan Barnes (Princeton: Princeton University Press,

both Fadlallah and Khomeini instrumentalised family and gender relations to maximise what they believed to be a common good, Fadlallah rejected Khomeini's all-encompassing Islamic discourse to resonate with, and lead, a diverse Lebanese audience for whom Shi'i revolutionary discourse had long been a divisive force.

Chapter Four: Competing Sovereignities

My fourth chapter examines how Fadlallah and Khomeini's respective quests for sovereignty reflect their diverging notions of a common good. Considering the above discussions on the public sphere and the family as facets of a society through which *maṣlahā* is maximised, we might conclude that the desired end to this means is sovereignty, the definition of which remains multidimensional and contentious. Nevertheless, Skinner suggests that if “we conceive of sovereignty as an argument, as a claim to authority, then there is no sense at all in which it can be ‘reduced’.”¹²⁶

Hisba and *maṣlahā* will have already been established as claims to authority in social and political life—in ideas of community and state—respectively. Thus, in specific contexts in cooperation, they provide a complete claim to sovereignty. This chapter focuses specifically on Fadlallah's concept of *dawlat al-insān* as a challenge to Khomeini's *wilāyat al-faqīh* in order to show how the former shifted the

1984). Although my reference to Aristotle might seem misplaced, both Khomeini and Fadlallah were well schooled in the thought of Aristotle and other early Greek philosophers as essential to seminary education in Najaf and Qom. For more on Aristotle as an influence on Khomeini, see Alexander Knysh, “‘Irfan’ Revisited: Khomeini and the Legacy of Islamic Mystical Philosophy,” *Middle East Journal* 46, no. 4 (1992): 631-653, esp., 638.

¹²⁶ Hent Kalmo and Quentin Skinner, “Introduction: A Concept in Fragments,” in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, eds., Hent Kalmo and Quentin Skinner (Cambridge: Cambridge UP, 2010), 7.

parameters of debate on what Islamic sovereignty—or a more “human” oriented sovereignty—might look like outside of an Islamic republic.¹²⁷

¹²⁷ Sections of chapter four have appeared in the previously cited Nachman, “*Maṣlaḥa* as Sovereignty.”

Chapter One: The Language of *Ḥisba* and *Maṣlaḥa* in Khomeini and Fadlallah's Political Thought

This chapter defines the basic roles of *ḥisba* and *maṣlaḥa* in Khomeini and Fadlallah's political thought. I will first explain *ḥisba* and *maṣlaḥa* separately in order to understand how the two scholars established the parameters of debate on both concepts. To be sure, Khomeini transformed both concepts most dramatically, the effects of which Fadlallah was well aware.¹²⁸ After the two sections in which *ḥisba* and *maṣlaḥa* are separately discussed, the third and final section explains why, when understood as twinned concepts, *ḥisba* and *maṣlaḥa* demonstrate an indispensable yet often ignored component of modern Islamic political thought. This chapter shows, in other words, that the two epitomise ethics and politics, which are intimately related and legitimise one another. Indeed, if we consider works of Islamic jurisprudence both as a basis for Islamic ethics, as Kevin Reinhart has shown, and as fashioned by historical circumstances (i.e., politics), as Rebecca Sauer argues, then it seems impossible or at least irresponsible to separate ethics from politics in studies on Islamic thought.¹²⁹

Khomeini and Fadlallah conceived of *ḥisba* and *maṣlaḥa* as fundamental components of law and authority in Islam, articulating *ḥisba* through their writings on commanding right and forbidding wrong, an ethical precept that, for the two clerics,

¹²⁸ Jamal Sankari reminds us that Fadlallah helped draft a letter in 1963 opposing the shah's detention of Khomeini. Subsequently, in 1975, Fadlallah signed a pact supporting the cooperation between the PLO, Amal, and pro-Khomeini revolutionaries in Lebanon. Sankari, *Fadlallah*, 153, footnote 132.

¹²⁹ A. Kevin Reinhart, "Islamic Law as Islamic Ethics," *The Journal of Religious Ethics* 11, no. 2 (1983): 186-203, esp. 186; Rebecca Sauer, "Tafsīr between Law and Exegesis: The Case of 49:9," in *Tafsīr and Islamic Intellectual History: Exploring the Boundaries of a Genre*, eds. Andreas Gorke and Johanna Pink (Oxford: Oxford University Press, 2014), 223-252, at 227-28.

conveys intent, individual and communal obligation, violence, and authority. *Maṣlaḥa*, however, was deployed in various ways, often as a less coherent and ambiguous opposition to corruption, as well as a tool for reinterpreting the *sharī‘a*’s boundaries for the welfare of a modern political public. With the establishment of the Islamic Republic, however, *maṣlaḥa* transformed into an effective tool for governance. This chapter will conclude by arguing that while *ḥisba* functions primarily in the social and ethical realms, *maṣlaḥa* functions in the political, meaning that it is meant only for those with a certain type of authority. Ethics and politics nevertheless spill over between both concepts enabling a reinterpretation of the law’s boundaries. This reinterpretation is, as we will see, dependent on contingency in jurisprudence, allowing for activism and innovation, as well as ideological opposition from, for example, other scholars like Fadlallah.

Commanding and Forbidding...

...in Khomeini’s Thought and Writings

On 16 January 2013 a conference was held to discuss Khomeini’s *Taḥrīr al-wasīla*, his first collection of *istiftā’āt* (religious opinions) published between 1964-65. During the conference, the prominent Ayatullah Muḥammad Mu’min (b. 1940), a former student of Khomeini’s and a member of the Guardian Council,¹³⁰ addressed a diverse group of attendees.¹³¹ Mu’min explained, “[t]he Guardian Council’s proof for accommodating the laws with the *sharī‘a* is [Khomeini’s] *Taḥrīr al-wasīla*,” and accordingly, “there is no greater [written] legacy than that of the late Sayyid

¹³⁰ The Guardian Council is tasked with reviewing parliamentary laws in accordance with the *sharī‘a*.

¹³¹ The attendees included the heads of The Institute for Compilation and Publication of Imam Khomeini’s Works and members of The Committee of Islamic Sciences.

[Khomeini's] *Tahrīr al-wasīla*.”¹³² But why is the *Tahrīr al-wasīla* more essential to the Islamic Republic's organs of government than Khomeini's more widely read *Risāla tawzīh al-masā'il*? And, more importantly, what is the *Tahrīr*'s relationship to state legislation?

At first glance, Khomeini's *Risāla* appears to be an abridged version of the *Tahrīr*. But according to a recent monograph published by The Institute for Compilation and Publication of Imam Khomeini's Works, titled *Amr bih ma'rūf va nahī az munkar az dīdgāh-i Imām Khumaynī*, Khomeini's jurisprudence best represents the political revival of commanding and forbidding.¹³³ The monograph adds that Khomeini's most important contribution to this revival is found in his *Tahrīr*. This sentiment echoed by Ayatullah 'Azīmī Javādī Amulī (b. 1933), who, according to a Jamārān news report, testified that the judicial organs of the Islamic Republic would be crippled if not for the *Tahrīr* because commanding and forbidding is necessary for both state and government.¹³⁴

Amulī and Mu'min's supplementation of constitutional law with commanding and forbidding is best contextualised by how Khomeini transformed the duty. In 1964, Khomeini was exiled to Turkey after having been twice imprisoned for his opposition to the shah's policies. During his exile in Bursa between 1964-65, he penned his *Tahrīr al-wasīla*. Intended as a commentary on Ayatullah Abū al-Ḥasan

¹³² *Pāyghāh-i iṭalā' -i risānī va khabarī-yi jamārān*, “Malāk-i shūrā-yi nigahbān barā-yi taṭbīq-i qavānīn bā shar‘ Tahrīr al-wasīla-yi Imām ast” (16 January 2013). URL: http://jamaran.ir/fa/NewsContent-id_24503.aspx.

¹³³ *Mu'assasa-yi tanzīm va nashr-i āsar-i Imām Khumaynī*, *Amr bih ma'rūf va nahī az munkar az dīdgāh-i Imām Khumaynī* (Tehran: Chāp va nashr-i 'Arūj, 2012), *ṭ*.

¹³⁴ *Ibid.*, *ṭ*; and *Pāyghāh-i iṭalā' -i risānī va khabarī-yi jamārān*, “Tahrīr al-wasīla kitābī būd kih bih niẓām khadmat kard” (9 January 2013). URL: http://jamaran.ir/fa/NewsContent-id_24409.aspx.

al-İşfahānī's (d. 1946) *Tahrīr al-najā* Khomeini added to his *Tahrīr* new sections on insurance, banking, and, most importantly, commanding and forbidding. To be sure, the *Tahrīr* was the first time Khomeini provided for his followers such a comprehensive resource for religious emulation.¹³⁵ Even Khomeini's posthumously established website attests that "the *Tahrīr al-wasīla* contains all [necessary] sections for Shi'i jurisprudence."¹³⁶ And although Khomeini's *Risāla*, published later and in Persian (the *Tahrīr* was originally published in Arabic), also contains a section on commanding and forbidding, the *Tahrīr* boasts Khomeini's most detailed discussion of the duty.¹³⁷

It should be reiterated that this style of *risāla*, in which an entire section is dedicated to commanding and forbidding, dates back at least to Abū Ja'far Muḥammad bin Ḥasan Ṭūsī and is therefore not a particularly unusual addition to a work of jurisprudence.¹³⁸ However, that Khomeini chose to add a new section titled "Kitāb al-amr bi-l-ma'rūf wa-l-nahī 'an al-munkar (The Book of Commanding Right and Forbidding Wrong)" to a commentary on İşfahānī's work suggests that he believed his followers needed new guidelines for commanding and forbidding's performance, and thus new guidelines for living an ethical life. Furthermore, while it is not uncommon for scholars to publish commentaries on older works of *fiqh* or for a

¹³⁵ Khumaynī, *Tahrīr al-wasīla* vol. 1, 4. For some references I have used a recent translation of the *Tahrīr al-wasīla*, translated by Dr. Sayyid Ali Reza Naqavi, as a guide. See Imam Rouhullah Khomeini, *Tahrīr al-wasīla*, tr., Dr. Sayyid Ali Reza Naqavi (Tehran: The Institute for Compilation and Publication of Imam Khomeini's Works, 2001).

¹³⁶ *Imam Khomeini*, "mukhtaşar-i darbāra-yi kitāb-i Tahrīr al-wasīla aşar-i arzishmand-i Imām Khumaynī." URL: <http://www.imam-khomeini.ir/fa/n23169/>.

¹³⁷ The section on *amr bi-l-ma'rūf wa-l-nahī 'an al-munkar* in Khomeini's *Risāla* contains no introduction and reads more as a summary of the main points made in his *Tahrīr*, leaving out illuminating discussions on intent and other topics.

¹³⁸ Cook, *Commanding Right and Forbidding Wrong*, 252, footnote 2.

marja' to base his *risāla* on a previous one, Khomeini's stark deviation from a commentary on a much older work indicates that he intended to present an entirely new paradigm for commanding and forbidding that is unbound by prior iterations.

Khomeini divided his "Kitāb al-amr bi-l-ma'rūf wa-l-nahī 'an al-munkar" into three chapters, each of which he organised in list-form proposing practical problems encountered by a *mukallaf* (every legally competent Muslim) when commanding and forbidding.¹³⁹ Chapter one, titled "Varieties of the Two Duties and the Nature of Their Obligation," details what is obligatory and recommended to command, what is obligatory and recommended to forbid, and the obligation for a community or individual to command or forbid. Chapter two is titled "Conditions for Obligation of the Two Duties," which discusses the capability, limitations, and goals of he/she who might command and forbid. Chapter three is titled "Grades of Commanding the Right and Forbidding the Wrong," which outlines the three methods for commanding and forbidding: the heart, tongue, and hand. Finally, the "Conclusion" discusses who has the authority to delegate commanding and forbidding, as well as the duty's relationship to the *sharī'a*.

In the "Kitāb al-amr bi-l-ma'rūf wa-l-nahī 'an al-munkar," Khomeini first established the necessity of commanding and forbidding for all Muslims. He placed this duty alongside the primary ordinances of Islam (*al-aḥkām al-awwaliyya*) while emphasising the importance of intent for one who commands or forbids because mere

¹³⁹ According to Khomeini, "a minor is not bound to command or forbid anything... Nor is it obligatory for a *non-mukallaf* like a minor or insane person to command or forbid another. Of course, if the wrong is such that the person does not agree with its existence at all, a *mukallaf* is bound to forbid a *non-mukallaf*." Khumaynī, *Tahrīr* vol. 1, 475.

appearance is insufficient. This intent, as we shall see, cannot be assessed by anyone except for the performer, thus allowing for Muslims to exercise a degree of free will when performing commanding and forbidding while revealing problems for juridical procedures in the Islamic Republic.

Within the first lines of his introduction to “Kitāb al-amr bi-l-ma‘rūf wa-l-nahī ‘an al-munkar,” Khomeini declares:

It is [commanding and forbidding] that sustain all the other obligatory duties and considering them among the obligatory duties is among the essentials of [the Islamic] faith. A person denying them as obligatory and essential duties with full realisation of its consequences is deemed a disbeliever.¹⁴⁰

He immediately defines the duty’s performance and the performer’s benevolent commitment as an obligatory component of faith alongside the five pillars of Islam: prayer (*ṣalāt*), fasting during Ramadan (*ṣawm*), charity (*zakāt*), pilgrimage (*hajj*), and accepting the oneness of God with Muḥammad as His messenger (*al-shahāda*). He additionally defines one who does not accept this obligation as a disbeliever (*kāfir*). Khomeini then references several passages from the Qur’ān and the *ḥadīth* of the Prophet and Imams, emphasising commanding and forbidding’s performance as a sign of true faith, which strengthens the Muslim community and ensures submission to God.¹⁴¹

¹⁴⁰ Khumaynī, *Tahrīr* vol. 1, 462.

¹⁴¹ “It has also been reported from the Prophet, Allah's Blessings be on him and his Progeny, (that he has said): ‘Verily Allah loathes a weak believer who has no belief. He was asked: Who is a weak believer who has no belief?’ He said. ‘One who does not forbid the wrong.’” Ibid., 462. “And let there arise from among you a community inviting what is good, commanding right and forbidding wrong. They are the ones who shall be successful” (Q.111: 104). Ibid., 462. “The Messenger of Allah, Allah's Blessings be on him and his Progeny, has said: ‘When my community (of followers) abandons commanding the right and forbidding the wrong, then let them declare war against Allah’.” Ibid., 462.

Khomeini clarifies that not only outward acceptance and performance of commanding and forbidding are required, but also inner intent and consistent commitment to the eradication of evil. Summoning the words of Imām Abū Ja‘far al-Bāqir, Khomeini warns, “in the last of the days there shall arise a people who will follow those who practise hypocrisy. They will pretend to recite the Qur’ān and perform other religious rites...”¹⁴² Those hypocrites, he explains, will abide by the precepts of Islam only if and when it is convenient.

He continues, “if prayer is damaging for the deeds performed by [hypocrites], they discard it in the same way as they discard the most superior and most preferable obligatory duty.”¹⁴³ Thus, for Khomeini, commanding and forbidding is at least as important as the five pillars while also serving as a tool to reform and purge the Muslim community of harmful elements. But despite the importance of inner intent for Khomeini, he gives us no method for its assessment. He does, however, further clarify the meaning of intent for the *mukallaf*.

¹⁴² Ibid., 462.

¹⁴³ Khumaynī, *Tahrīr* vol. 1, 462. This reference echoes Khomeini’s earlier emphasis on the dichotomy of the esoteric (*bāṭin*) and the exoteric (*ẓāhir*) in worship, found in his *Sirr al-ṣalāt* (*The Mystery of Prayer*), originally published in 1939. Sayyid Amjad H. Shah Naqavi argues in his translation of Khomeini’s *Sirr al-ṣalāt* that this dichotomy is essential to understanding the Ayatollah’s philosophy because outward action cannot exist without the inward and vice versa. See Ruhollah Khomeini, *The Mystery of Prayer: The Ascension of the Wayfarers and the Prayer of the Gnostics*, tr. Sayyid Amjad H. Shah Naqavi (Leiden: Brill, 2015), xvii. Khomeini explains that one can know God neither through his or her intellect nor heart, but that nevertheless a pure heart allows one to get closest to Him. Again quoting Imām al-Bāqir, Khomeini tells us, “[w]hen ‘Ali b. al-Husayn [...] arose for prayer his colour would change and when he prostrated he would not raise his head until he was perspiring.” See Khomeini, *The Mystery of Prayer*, 42. Additionally, Neguin Yavari has recently shown that for Khomeini, the esoteric, that is spiritual intent, is the true testament of piety. See Neguin Yavari, “*Tafsīr* and the Myth of Islamic Fundamentalism,” 302. See also Henry Corbin, *The History of Islamic Philosophy*, tr., Liadain Sherrard (Oxford: Routledge, 2014), 7.

In chapter two Khomeini outlines four conditions for the performance of commanding and forbidding. The second condition states that commanding or forbidding must be permissible and the action's effect must be probable. If one is certain that neither probability nor permissibility exist, then commanding and forbidding is not obligatory.¹⁴⁴ To borrow from G. E. M. Anscombe, commanding and forbidding, for Khomeini, are expressions of intention, meaning that a *mukallaf's* actions whether a command or forbiddance express a desired outcome, or an "effect," of promoting right and eradicating wrong.¹⁴⁵

Along with the importance of "effect," commanding and forbidding also requires the performer's integrity and truth. Different from a reason, this truth is a product of the *mukallaf's* honesty with him/herself when assessing probability, permissibility, and certainty. Khomeini tells us, for instance, that if one *mukallaf* is certain that another has abandoned right (*taraka al-ma'rūf*) or performed wrong (*fa'ala al-munkar*), then it is obligatory to command and forbid; if one is certain or if there are signs that the wrongdoer has abandoned the wrong, then it is no longer obligatory; if there are signs that the wrongdoer intends to repeat the wrong, then it is

¹⁴⁴ Khumaynī, *Tahrīr* vol. 1, 467.

¹⁴⁵ Anscombe argues that "the reasons justifying an order," or commanding and forbidding in our case, "are not ones suggesting what is probable, or likely to happen, but e.g. ones suggesting what it would be good to make happen with a view to an objective..." and "...in the case of commands, the reason lies in the superficial grammar..." But she adds, "a command is essentially a sign (or symbol), whereas an intention can exist without a symbol; hence we speak of commands, not the expression of commanding; but of the *expression of intention*." See G. E. M. Anscombe, *Intention* (Cambridge: Harvard University Press, 1963), 4-5. My argument differs from Anscombe's by defining commanding and forbidding as expressions of the intention to promote right and eradicate wrong. In the case of the present study commanding and forbidding can be performed without a symbol but, for example, in one's heart by knowing and speaking for right and against wrong from within. Commanding or forbidding the heart is, in fact, not a symbol for Khomeini but an action.

obligatory to command and forbid.¹⁴⁶ But there are neither external checks and balances on one who is obliged to perform the duty nor is there codified punishment for transgression. In other words, the *mukallaf* must act autonomously and sincerely. If the *mukallaf* is uncertain or has insufficient knowledge of Islamic sources and the situation, then he or she is not obliged to command or forbid because the act will not be based on what is truly necessary. Doing so without sufficient knowledge might result in an erroneous outcome.¹⁴⁷

This is why, for Khomeini, personal and communal integrity were essential and hypocrisy was a sin; hypocrisy is a spiritual and material betrayal of oneself and one's community. The above presentations of intent and effect, as esoteric (*bāṭin*) and exoteric (*ẓāhir*) components respectively, seem to position *takfīr* (the act of declaring someone an apostate) outside the boundaries of positivist law's rational methodology. If commanding and forbidding possesses an esoteric character, as humans do, then assessing the duty on every level is impossible, especially through rationality alone. One might know and express one's intention but one cannot know another person's intention through a legal or scientific method.

Take apostasy, for example, which is punishable by death in the Islamic Republic. On the one hand, the Islamic Republic's stance on apostasy allows the

¹⁴⁶ Khumaynī, *Tahrīr* vol. 1, 465.

¹⁴⁷ Khomeini's first condition is that "[t]he person commanding or forbidding must know whether the 'right' that *mukallaf* is abandoning is 'right', or the 'wrong' that he is perpetrating is 'wrong'..." adding, "...it is not obligatory on a person who is ignorant of right and wrong to exercise the duty. Its knowledge is a condition for the obligation of the duty, as capability is a condition for the hajj." Thus, a *mukallaf* must have knowledge of the law in order to command or forbid, while blind *taqlīd*—*taqlīd* without any basis of knowledge—is forbidden in order to prevent the performance of a wrongful act in the midst of commanding or forbidding. *Ibid.*, 465.

accused to repent as an expression of their true intent or faith (or lack thereof, if they refuse). Although apostasy does not always fall explicitly under the purview of commanding and forbidding, the two—apostasy and commanding and forbidding—require public expression for their assessment, but not necessarily for their performance because apostasy and commanding and forbidding maintain a spiritual and thus ambiguous quality, unlike treason.¹⁴⁸ On the other hand, it is revealing that punishment for apostasy is not codified in the Islamic Republic’s Constitution but defined instead as a *hudūd* punishment, the sentencing for which is at the discretion of individual judges who must reference Islamic sources.¹⁴⁹ Each judge must interpret the situation instead of abiding by a clearly defined legal norm.

The Iran Human Rights Documentation Center, based out of Yale University, argues that apostasy’s lack of codification contributes to the absence of legal certainty for the Islamic Republic’s citizens.¹⁵⁰ Yet, might this absence of certainty reveal that Khomeini and the Islamic Republic’s current judicial establishment understand law’s inability to determine intent, intent that is integral to Islamic ethics and commanding and forbidding? Unlike cases of apostasy, for which judgement depends on the

¹⁴⁸ Apostasy is mentioned neither in Khomeini’s *Tahrīr* nor in the Islamic Republic’s constitution but some clerics, such as Ayatullah Taqī Miṣbāḥ Yazdī, believe that abandoning the duty to “command and forbid” amounts to apostasy. See *Khabar Online*, “Ayatullah Miṣbāḥ: shak dar vujūb-i amr bih ma’rūf, bih irtidād mī anjāmad,” 4 September 2010. URL: <http://khabaronline.ir/detail/89595/Politics/parties>.

¹⁴⁹ The Constitution of Iran, Article 167: The judge is bound to endeavour to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic fatwa. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment. URL: <http://www.iranonline.com/iran/iran-info/government/constitution-11.html>.

¹⁵⁰ *Iran Human Rights Documentation Center*, “Apostasy in the Islamic Republic of Iran,” 30 July 2014. URL: <http://www.iranhrdc.org/english/publications/reports/1000000512-apostasy-in-the-islamic-republic-of-iran.html>.

discretion of judges, commanding and forbidding's performance depends to an extent on individual and communal discretion. And it is this individual and communal discretion that allows for a broader interpretation.

After the 1979 revolution, Khomeini emphasised the importance of self-governance through commanding and forbidding as a way to reform both the self and the community. In 1979, for example, he implored female members of Isfahan's Charity Institution to "[t]ry to exercise Islamic precepts and urge others to do so. As a person is obliged to correct oneself, he/she is also obliged to correct others. The principle of commanding right and forbidding wrong is to correct society."¹⁵¹ Linking this principle to national independence, he elaborated, "we cannot reform our country unless we reform ourselves. If you want your country to be independent begin with yourself."¹⁵²

Perhaps if we look elsewhere, authority over self-governance and enforcing morality becomes clearer. The French historian, Michel Foucault, presented in "Technologies of the Self" ways by which individuals exercise authority when performing and understanding ethical actions. This approach can reveal important parallels with commanding and forbidding. Foucault was primarily concerned with the genealogy of how individuals act vis-a-vis themselves and how these actions affect the relationship with oneself and others. He sought to reveal how our understanding of our surroundings and ourselves dictate individual and group

¹⁵¹ Rūḥallah Khumaynī, *Ṣaḥīfa-yi Imām* vol. 10 (Tehran: Mu'assasa-yi tanẓīm va nashr-i āṣār-i Imām Khumaynī, n.d.), 190.

¹⁵² Martin, *Creating an Islamic State*, 42.

interaction based on what is “forbidden.”¹⁵³ According to Foucault, this genealogy is rooted partially in the ways some Greco-Roman Stoics examined the self as an administrative (not “juridical,” as he carefully points out) stocktaking of one’s deeds and intentions, an assessment rather than a judgement of bad intentions.¹⁵⁴ “The subject,” he tells us, “constitutes the intersection between acts which have to be regulated and rules for what ought to be done.”¹⁵⁵ Of course, commanding and forbidding is not simply stocktaking but a performance, which requires of the performer(s) a personal and communal assessment rather than a juridical reckoning.

The early Christian monk engages in judgement by turning “his thoughts continuously to that point which is God and to make sure that his heart is pure enough to see God.” But, like earlier Stoics, Khomeini links commanding and forbidding to earthly endeavours that affect one’s community.¹⁵⁶ Despite the esotericism of commanding and forbidding by the heart, this action still bears material effects, meaning that one’s true belief has external consequences. If Khomeini’s *mukallaf* performs with sincerity and intends to get closer to God, then he or she will be rewarded, but this is by no means a requirement or priority.¹⁵⁷ Commanding and forbidding is primarily intended not for individual purification but for the general

¹⁵³ Michel Foucault, “Technologies of the Self,” in *Technologies of the Self: A Seminar with Michel Foucault*, eds., Luther H. Martin, Huck Gutman, and Patrick H. Hutton (London: Tavistock Publications, 1988), 16-49, at 17-19.

¹⁵⁴ *Ibid.*, 33-34.

¹⁵⁵ *Ibid.*, 34.

¹⁵⁶ *Ibid.*, 45; Khomeini was undoubtedly familiar with early Greek philosophers, such as Plato, Aristotle, and Pythagoras. See Rūḥallah Khumaynī, *Kashf al-asrār* (Los Angeles: Ketab Corp, 2009), 31-35.

¹⁵⁷ Khumaynī, *Tahrīr* vol. 1, 465.

elimination of corruption (*fasād*), and the duty's performance as an end in and of itself.¹⁵⁸

Khomeini goes on to explain the difference between an individual and community's obligation to command and forbid, declaring that the obligation is communal (*kifā'ī*). This means that if one performs the duty to completion then others shall be absolved from performing the duty. If not, then all those capable will have abandoned the duty.¹⁵⁹ Conversely, if performing an obligatory act or eliminating a wrong depends on the concerted action of a group to command or forbid, then it is obligatory to act in sufficient numbers.¹⁶⁰

Foucault himself addressed how the Iranian Revolution implemented new ways of self-governing and speaking truth to power. Janet Afary and Kevin B. Anderson argue that Foucault was concerned with how Iranian "Islamists" mobilised Shi'i rituals to enable what he termed "political spirituality."¹⁶¹ But Foucault's phrase appears to have a more significant metaphysical aspect to it. In his chapter, "Questions of Method," Foucault defines "political spirituality" as a problem of truth and governance.¹⁶² "Isn't the most general of political problems the problem of truth?," Foucault asks.

¹⁵⁸ Ibid., 465.

¹⁵⁹ Ibid., 464.

¹⁶⁰ Ibid., 464.

¹⁶¹ Janet Afary and Kevin B. Anderson, *Foucault and the Iranian Revolution: Gender and the Seductions of Islamism* (Chicago: The University of Chicago Press, 2005), 39.

¹⁶² This chapter originally appeared in Michelle Perrot, ed., *L'Impossible prison: Recherches sur le système pénitentiaire au XIXe siècle* (Paris: éditions du Seuil, 1980). See Michel Foucault, "Questions of Method," in *Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault*, eds. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: The University of Chicago Press, 1991), 73-86, at 82.

How can one analyze the connection between ways of distinguishing true and false and ways of governing oneself and others? The search for a new foundation for each of these practices, in itself and relative to the other, the will to discover a different way of governing oneself through a different way of dividing up true and false - this is what I would call ‘political *spiritualité*’.¹⁶³

It is indisputable that Khomeini built a new foundation for both truth and politics. Yet, if truth is the most general of political problems, then from where does political authority receive its legitimacy? I do not mean to suggest that the distinction between “true and false,” as Foucault would have it, is irrelevant to politics but rather that this distinction is subordinated to authority. In other words, true and false, like those ambiguous qualities of commanding and forbidding, function most significantly in the social realm, a realm in which legislation through governing institutions cannot be wholly effective.

Even those citizens and clerics who believe in the importance of commanding and forbidding have challenged the state’s enforcement of the duty. One low-level cleric recently commented on a mobile phone application (named *Girshād*) used to avoid the morality police (*Irshād*), stating, “commanding right and forbidding wrong are divine duties. But neither the *Irshād* nor the *Girshād* is the solution.”¹⁶⁴ This statement indicates that no matter the state’s efforts, it can regulate only commanding and forbidding by force—by the hand—and not by the heart or even effectively by the tongue (or by the app). Doing so would separate the duty from the very parts that make it whole.

¹⁶³ Ibid., 82.

¹⁶⁴ Citizens, including clerics who believe in the importance of commanding and forbidding, have challenged the state’s enforcement of the duty. See Sheikh Arsalan, “Amr bih ma’rūf va nahī az munkar dastūr-i khudāst. Amā na miṣl-i gasht-i irshād va rāh-i ḥalish ham app-i girshād nīst...” *Twitter*, 9 February 2016. URL: <https://mobile.twitter.com/bayusaan/status/697034705695305728>.

Unlike when a cleric authors a *risāla* for his followers from whom he obtains authority, commanding and forbidding's nature is such that a state institution or political party cannot enforce it with absolute legitimacy. This means that if a certain brand of authority produces juridical order—with a decision to create a political form from an idea (e.g., to ratify a law or to establish an institution)—rather than truth based on tradition or rationality, then perhaps the brand of authority to command and forbid lies elsewhere.¹⁶⁵ Khomeini's previously discussed pronouncements thus indicate that for some clerics, authority outside of codified law is necessary in order to maintain influence.

For a political figure like Khomeini, commanding and forbidding, by all means except force, are prerogatives of ordinary citizens largely independent of legislation and state institutions. True authority over commanding and forbidding thus appears in the realm of the social, not the political. But how then does commanding and forbidding's social role manifest itself and what purpose does it serve?

The starkest manifestation of commanding and forbidding appears perhaps with Khomeini's call for revolution with self-sacrifice against the shah. Khomeini's chapter on "Grades of Commanding the Right and Forbidding the Wrong" breaks from almost all prior discussions on commanding and forbidding to deliver a social call to action. He begins this chapter by defining an essential principle of

¹⁶⁵ For more on the significance of authority and truth in politics, see Carlo Galli, *Janus's Gaze: Essays on Carl Schmitt*, ed., Adam Sitze and, tr., Amanda Minervini (Durham and London: Duke University Press, 2015), 38-39.

commanding and forbidding known as *ahammiyya*, stating, “there should not be in the forbiddance any cause of evil,” meaning, as he explains:

If it is known or is presumed that forbidding a person shall or be likely to cause considerable damage to his life, honour or property or any of persons related to him like his close relatives, companions or servants, or other believers, forbidding him shall not be obligatory and its obligation shall drop.¹⁶⁶

This definition of *ahammiyya* is not a novel one.¹⁶⁷ Khomeini keeps with tradition, telling us that it is not permissible to command or forbid if the duty may “disgrace the holy *sharī‘a*,” even if only some people consider this disgrace probable and especially if there is no certainty that commanding and forbidding will fulfil the desired end.¹⁶⁸

However, what comes next is unprecedented. Khomeini breaks from the quietist tradition upon which *ahammiyya* was established by adding to his position an exception. This exception comes, he says, “when the case is among the important ones, though cases differ [in terms of importance (*ahammiyya*)].”¹⁶⁹ According to Khomeini, the damage (*darār*) or loss, whether to one or another’s life, shall not justify an exemption from the duty if the right or wrong is essential in the eyes of God. This includes protecting the lives or honour of a Muslim tribe, the destruction of Islamic monuments or records, or the destruction of Islamic places of worship.¹⁷⁰ Of course, the shah had embodied these threats in 1978 when Khomeini declared the following to a group of Iranian students living in France:

The tyrannical sultan [Yazīd] said that he was Muslim, but Yazīd was the kind of Muslim that the shah is... Now, we too must confront [the shah] with whatever it takes. We must forbid him to do evil and command him to do right, and we are to pull him down from this redundant throne. Hence, we are

¹⁶⁶ Khumaynī, *Tahrīr* vol. 1, 472.

¹⁶⁷ Cook, *Commanding Right and Forbidding Wrong*, 534.

¹⁶⁸ Khumaynī, *Tahrīr* vol. 1, 467.

¹⁶⁹ *Ibid.*, 467.

¹⁷⁰ *Ibid.*, 467.

not concerned about sacrificing our lives; let us sacrifice them. This is clearly something that we must do.¹⁷¹

Khomeini once again defined hypocrisy as a central theme of commanding and forbidding. He couched the duty to command and forbid in the shah's hypocrisy, as a threat to the integrity of Islam, and by extension to the *sharī'a*. In order to defend against this threat, he transformed the tradition of commanding and forbidding into a justification for self-sacrifice as martyrdom against the norm of tyrannical law, thus allowing for an exceptional situation in which revolution would be possible. This is an exception both to the principle of *ahammiyya* and to monarchy as the general condition of the Iranian state. With this exception he sanctioned violence in the form of revolution and martyrdom to uphold the law, not of the shah or the state of Iran, but of Islam—the *sharī'a*.¹⁷² Indeed, the very success of the Iranian Revolution only months later affirms the resonance of Khomeini's call.

For Foucault, martyrdom is penitence *par excellence*. It is the act of “the man who prefers to die rather than to compromise or abandon the faith.”¹⁷³ In Khomeini's case, however, it is the act of a man or woman who chooses to sacrifice for a state or the idea of one. That Foucault seemed unaware of martyrdom's secularisation is puzzling. “Penitence of sin,” he believes, “doesn't have as its target the establishing of an identity but serves instead to mark the refusal of the self, the breaking away from self.” It is only with these “ostentatious gestures”—to use Foucault's phrase—by which one simultaneously self-destructs while revealing the true condition of the

¹⁷¹ Khumaynī, *Ṣaḥīfa-yi Imām* vol. 4, 151.

¹⁷² For more on violence as a means to uphold the law, as opposed to the law as a means to eliminate violence, see Paul Kahn, *Political Theology: Four New Chapters on the Concept of Sovereignty* (New York: Columbia University Press, 2012), esp. 11.

¹⁷³ Foucault, “Technologies of the Self,” 43.

sinner's (the martyr's) being.¹⁷⁴ But Khomeini is clear that the past is essential and self-sacrifice must occur on a collective level. Therefore, might martyrdom, in the service of a state and nation, function instead as the affirmation of one's national identity over one's other identities?

To be sure, martyrdom is dictated neither by commanding and forbidding, as a duty, nor by a single authority. Commanding and forbidding, as Khomeini envisioned it, functions as an ethical and social call for Iranians to assert their agency as citizens and Muslims. For it would have been impossible to legally or forcefully obligate Iran's citizens to sacrifice their lives. The duty to command and forbid provided an ethical base on which to sanction the personal use of violence and violent sacrifice for politics. As Paul Kahn points out, the personal choice to become a martyr for a greater purpose is precisely what endows it with both sacred and political meaning because every revolution entails the willingness of self-sacrifice. At the same time, "it does not demean revolutionary action to recognise that revolutionaries dream of well-being even as they give themselves freely to a politics of sacrifice..."¹⁷⁵ Khomeini therefore deployed the duty to command and forbid in order to justify self-sacrifice and martyrdom where it had not been justified before, on the one hand, and to adumbrate the willingness to do so as an ethical-social responsibility on the other.

In this section I showed how Khomeini took what was once a set of ethical obligations found in a large corpus of *fiqh* and pushed these obligations into a realm in which their applications and guidelines are less constrained by their previous iterations. His speech at Neauphle-le-Château marked not only a watershed in his

¹⁷⁴ Ibid.

¹⁷⁵ Kahn, *Political Theology*, 22.

pronouncements on commanding and forbidding, but also for its general history because of his explicit circumvention of *ahammiyya*. Addressing this principle was significant because of its role as a bulwark against unbridled violence or the duty's unchecked use by laymen. Tackling *ahammiyya* as a limitation on authority, Khomeini redefined its meaning to deploy it in his favor; the threat is new and supercedes historical precedence. As such, the imam would no longer be a legitimate authority and Twelver notions of the duty in which the imam is the final authority on violence are no longer binding. Although other jurists, such as Ayatullah Muḥammad Riżā Gulpāyḡānī (d. 1993) required the permission of a jurist to perform violence and Ayatullah Muntazirī required judicial authority for the same,¹⁷⁶ none had sanctioned it on a collective level. Nor had they sanctioned self-sacrifice in any iteration. Collective self-sacrifice would now be allowed by a clerical authority and justified by political contingency. Khomeini, in other words, drew on the “Imami” tradition only to reject it.

This rejection paved the way for commanding and forbidding's transformation, perhaps inadvertently, into a highly contested political concept in post-revolutionary Iran. In a way, Khomeini was able to do this because he, like other clerics, straddled both the political-judicial and social realms. He also understood that legislating on certain Islamic precepts, such as commanding and forbidding, would be impossible because unlike the political-judicial world, the social world allows for ambiguity beyond political forms or institutions.

¹⁷⁶ Cook, *Commanding Right and Forbidding Wrong*, 541.

Khomeini's endeavour initiated commanding and forbidding's evolution from textual rigidity, authored differently by a range of scholars at various moments, to conceptual ambiguity, an ambiguity illustrated in part by this thesis. That his jurisprudential method is often subordinated to how his jurisprudence affects society and politics in Iran is illuminating; to involve oneself solely with law at the expense of society and politics would be to oppose the very foundation on which Khomeini's political theology was based.

In other words, unlike legal veracity and competence, political value is measured by its success. It is therefore precisely because of commanding and forbidding's indefinite quality that it remains relevant for social autonomy and communality in the Islamic Republic. And although the duty might be limited by an authority like Khomeini, its performance can be complete only outside of a legal norm; social ethics cannot, in other words, be wholly codified. This will be contrasted presently with Fadlallah's notion of commanding right and forbidding wrong, which, while also a novel means for self-governance, is less applicable for a community's relationship to state.

...in Fadlallah's Thought and Writings

Among Fadlallah's earliest discussions of *ḥisba* is found in his book, *Al-Islām wa-manṭiq al-quwwa*, which, unlike Khomeini's *Tahrīr*, was written neither in exile nor as a *risāla* by which he would make a claim to *marja' iyya*. He wrote it during the earliest days of the Lebanese Civil War in 1976. Until his departure from al-Nab'a, which suffered a substantial siege and continuous bombardment from Christian Phalangists, Fadlallah had remained in the suburb in order to use his position as

representative of Ayatullah al-Khū'ī to establish makeshift medical services and financial support (there was only one hospital in al-Nab'a for approximately 100,000 residents).¹⁷⁷ It is important to keep in mind that Fadlallah was not yet a *marja'* but still a *mujtahid* with limited authority. With his manuscripts and lectures he began to carve out a space in which he could guide besieged Muslims through times of tribulation. Though based on a lecture he gave before his departure, *Mantiq al-quwwa* was completed in May 1976 only after his migration from al-Nab'a to Southern Beirut. Fadlallah tells us:

...this book has been written intermittently during war and death in the area in which I live, in the outskirts of Beirut, in al-Nab'a, which is under frequent shelling and in candle light ... I say these words in remembrance of [the war]...¹⁷⁸

Fadlallah penned his treatise, he explains, in order to answer several questions: “What is Islam’s position on the logic of force when it is required of a community... in times of war and in times of peace?”; “What is this logic’s position... as it relates to thought, legislation (the *sharī'a*), and activity in life?”; “What are the varieties of force in which Islam believes (or sanctions)?”; And “what is the position of ethical concepts, such as amnesty, forgiveness, tolerance, and patience toward this logic?”¹⁷⁹ According to Fadlallah, these questions are essential because Muslims “are facing an intellectual crisis debating the logic of power in Islam,” necessitating an analysis of relevant ideas and concepts. “The history of deviation and integrity is the history of intellectual deviation that turns into practical deviation.”¹⁸⁰ We thus find in *Mantiq al-quwwa* an endeavour to extract from Islam

¹⁷⁷ Sankari, *Fadlallah*, 156-57.

¹⁷⁸ Fadlallah, *Mantiq al-quwwa*, 16.

¹⁷⁹ *Ibid.*, 19.

¹⁸⁰ *Ibid.*, 21.

the strength to defend the faith from a deviation that is both ethical and intellectual, as well as from within and without.

According to Fouad Ajami, Fadlallah reinterpreted commanding and forbidding to allow for armed force in order to establish both a “religion and a state.”¹⁸¹ It seems, however, that rather than establishing a state, Fadlallah was more concerned with strengthening a community in order to resist injustice on a social level. This strength, which sometimes, if necessary, takes the form of force and violence, is a means by which the intellectually or politically oppressed might establish themselves as an integrous and cohesive community.¹⁸² The current section attempts not to answer all of Fadlallah’s above questions but rather to understand the role of *ḥisba*, expressed through the valences of *al-amr bi-l-ma’rūf wa-l-nahī ‘an al-munkar* in his thought.

According to Fadlallah, the force and power immanent in, and sanctioned by, Islam must be bound by an ethical duty through which the intellectually and politically oppressed might (re)assert themselves. At the start of his section in *Mantiq al-quwwa* on “Commanding Right and Forbidding Wrong,” he says that “the logic of force presents itself, when faced with tyranny, in the *sharī‘a*, which made ‘commanding right and forbidding wrong’ a required religious duty for all Muslims—generally—like any other religious duty...”¹⁸³ Resistance is therefore bound by ethics and is sanctioned by the *sharī‘a* as law, albeit uncodified law. Beginning his

¹⁸¹ Fouad Ajami, *The Vanished Imam: Musa al-Sadr and the Shia of Lebanon* (Ithaca: Cornell University Press, 1986), 215.

¹⁸² Fadlallah, *Mantiq al-quwwa*, 20-21.

¹⁸³ *Ibid.*, 69.

exposition with a reference to the *sharī'a*, however, Fadlallah is able to interpret that very law.

What is particularly novel about Fadlallah's exposition on commanding and forbidding in *Mantiq al-quwwa* is that unlike traditional works or his subsequent texts that deal with this duty, he avoided a gradation that distinguishes between heart, tongue, and hand as the three means for commanding right and forbidding wrong. This is not to suggest that he believed heart and tongue unnecessary but, to the contrary, that all three are inseparable when resisting systemic oppression and creating unity among Muslims:

[This duty] binds all Muslims to note the process of social deviation, whether religious deviation with individual rebellion against the will of God in acts of worship and transactions (*'ibādāt* and *mu'āmalāt*) or social deviation with collective behaviour that strays from the message's line in favour of individual and societal interest; or political deviation represented by unjust rule in tyranny against the weak and downtrodden, transforming issues of governance into processes of tyranny and aggression...¹⁸⁴

Fadlallah next references a communal heart, which is significant because when read with the above text it functions at this moment in his thought not only as a facilitator of communal self-governance, but also as a physical defence against moral deviation. Because, he tells us, "the will of Muslims is to support proper conditions that agree with the will of God and the welfare (*maṣlaḥa*) of man in any matter of public and private affairs... Islam creates self-control in the heart of the community."¹⁸⁵ With this "self-control," the community and the individual can maintain a moral high ground in order to defend themselves politically. In other words, integrity as self-control is essential to resistance.

¹⁸⁴ Ibid., 69-70.

¹⁸⁵ Ibid., 70.

Like Khomeini's understanding of commanding and forbidding, we have here a mechanism for self-governance that is opposed to state and government institutions should they be tyrannical and corrupt. For Fadlallah, this mechanism keeps itself in check because it is "subject to a feeling of conscious faith in the divine message that" does not only mitigate hypocrisy and corruption within the self and community, but also "transforms [simultaneously] into a defensive force within the human heart... into a deterring force within one's physical being based on harmony with conscious responsibility in life."¹⁸⁶

Fadlallah here is at odds with Khomeini's vision of heart, a means by which the latter intended a larger political effect. Unlike Khomeini, Fadlallah acknowledged that commanding and forbidding with one's heart entails mostly boycotts and protests that bear less material effect than one might expect, but the commander or forbidders must also intend on a general positive influence and diminution of corruption.¹⁸⁷ Khomeini, on the other hand, did not require a worshipping component for commanding and forbidding by the heart. For Khomeini, one's true belief—sometimes expressed with one's heart—bears material effects. If Khomeini's commander or forbidders intends on worship, then he or she will be rewarded, but this is by no means a requirement or priority.¹⁸⁸ One should instead intend not on complete individual purification but on eliminating societal corruption.¹⁸⁹

¹⁸⁶ *Ibid.*, 70.

¹⁸⁷ *Ibid.*, 628-29.

¹⁸⁸ Khumaynī, *Tahrīr* vol. 1, 465.

¹⁸⁹ *Ibid.*, 465.

After the Civil War and Khomeini's death, Fadlallah made an official claim to *marja' iyya*¹⁹⁰ and dedicated more space in his *Fiqh al-sharī'a* (his more traditional *risāla*) to commanding and forbidding with the heart. In this text he provided several examples of legitimate ways by which one might command and forbid with one's heart. These include refraining from greeting another Muslim with "*al-salāmu 'alaykum*," leaving one's kin, and finally a wife's abstinence from sexual relations with her husband.¹⁹¹ Fadlallah acknowledges that these are in fact boycotts and protests that are less consequential than one might hope—perhaps not dissimilar to the goldsmith's action mentioned in the introduction. For a duty with ethical change as its goal, these actions do not appear to elicit any significant political or social effect. He nevertheless stipulates that the commander or forbidders must also intend on a beneficial influence and diminution of corruption.¹⁹²

During this period, Fadlallah was also less concerned with methods of outright resistance than he was with self-governance and strengthening his community. He makes this clear in his *Fiqh al-sharī'a*: "The goal is for the sinner to repent and to obey [the duty] with the least amount of insult and injury." When commanding and forbidding, or following one's duty, one is not to pursue a ruling position in familial relations or other. A father and husband, Fadlallah says, are "beholden to the same provisions in commanding and forbidding except in certain rare situations that do not fall under the title for commanding and forbidding like" the right of a parent to discipline his/her child. In other words, "...men and women believers endeavour to be

¹⁹⁰ Clarke and Künkler, "De-centering Shi'i Islam," *British Journal of Middle Eastern Studies* 45, no. 1 (2018): 1-17, at 15-16.

¹⁹¹ Muḥammad Ḥusayn Faḍlallah, *Fiqh al-sharī'a: al-'ibādāt* vol. 1 (Beirut: Dār al-malāk, 2002), 628-29.

¹⁹² *Ibid.*, 628-29.

each other's' guides, protectors, helpers, lovers, and to be to each other all that *wilāya* is meant to be.”¹⁹³ Additionally, for Fadlallah, *ta'zīr* punishments are the prerogative of the state for cases that do not fall under jurisdiction of the *sharī'a*.¹⁹⁴

But the “heart” plays a more significant role above and beyond protest. According to Fadlallah, the heart, as a vessel for faith, is also the path to revolution. What, however, is revolution for Fadlallah? In his 2002 edition of *Fiqh al-sharī'a*, Fadlallah confirms that commanding and forbidding is “a part of worship to get closer to God, as the other *fuqahā'* say. As I see it, it has a huge impact on getting closer to God.” And, he qualifies, this part of worship works beyond an interaction between Muslims, extending to possible revolution.¹⁹⁵

For Fadlallah, Ḥusayn's march toward Karbala in order to lead the *umma* in opposition to Yazīd ibn Mu'āwiyya (d. 683) is revolution *par excellence*. He explains that this moment is where “we find ... the launch of the revolutionary expression in forbidding wrong.” On his way to confront Yazīd in Kufa, Iraq, Ḥusayn was intercepted by Yazīd's forces, which were commanded by al-Ḥurr ibn Yazīd. Refusing to accompany al-Ḥurr to Kufa to meet its new governor, 'Ubayd Allah ibn Ziyād, Ḥusayn delivered a sermon before his and al-Ḥurr's forces. It is this sermon to which Fadlallah refers and quotes at length:

¹⁹³ Aziz, “Fadlallah and the Remaking of the Marja'īya,” 209.

¹⁹⁴ *Ta'zīr* punishments are one of three main types of punishments in Islamic law, the other being *ḥadd* and *qiṣāṣ*. While *ḥadd* punishments are strictly outlined in the *Qur'ān* and *ḥadīth*, and *qiṣāṣ* punishments require equal retaliation for bodily or other types of harm, *ta'zīr* punishments fall under the discretion of individual judges because there are no strict guidelines found in the *Qur'ān* or *ḥadīth*; Fadlallah, *Fiqh al-sharī'a: al-'ibādāt*, 631.

¹⁹⁵ *Ibid.*, 621.

Oh people, the Messenger of Allah (peace be upon him and his household) said: He who amongst you witnesses the reign of a tyrant ruler, who allows himself to adopt the prohibitions that Allah imposes, violating the vows he gave to Allah, infringing the rules of Allah's Prophet (peace be upon him and his household), governing Allah's servants with sins and hostility, while not altering such evil doing by speech or action, he shall witness the same punishment of Allah as that tyrant. Yet, those people had attached themselves to the obedience of the devil, leaving away the compliance of the Merciful. They publicised corruption, exceeded the divine limits, and restricted the benefit of the nation's money to themselves; they also legitimised Allah's interdictions and forbade his decencies. While I, more than any other one, have the right to govern you... I left [Mecca] to demand reform (*al-iṣlāḥ*) in my grandfather's nation (*umma*) and I want to command right and forbid wrong...¹⁹⁶

After the sermon, al-Ḥurr joined Ḥusayn's forces in battle, resulting in the latter's macabre death as a source for Shi'i political theology. Andrew March has argued that the assassination of 'Alī (d. 661), Ḥusayn's father and only Rightly Guided Caliph according to Shi'ism, marks the beginning of Islamic political history. This means that on the one hand, questions arose regarding divine sovereignty and law, as well as an obligation to the imam. On the other hand, every revolt during the first two centuries of Islam was a response to illegitimate rule.¹⁹⁷ Yet, Fadlallah's interpretation of Ḥusayn's revolt invokes arguments neither for Ḥusayn's authority nor divine sovereignty where there are plenty to be found.

While in clear contrast to Khomeini's 1978 address to Iranian students in France, in which he compared the shah's hypocritical and destructive policies to those of Yazīd, Fadlallah also diverged from the socialist and revolutionary Islamist, 'Alī Sharī'atī (d. 1977).¹⁹⁸ Although Sharī'atī, like Fadlallah, was concerned with

¹⁹⁶ Faḍlallah, *Manṭiq al-quwwa*, 73.

¹⁹⁷ Andrew March, "Genealogies of Sovereignty in Islamic Political Theology," *Social Research* 80 (Special Issue on Political Theology), no. 1 (2013): 293-320, at 297.

¹⁹⁸ Khumaynī, *Ṣaḥīfa-yi Imām* vol. 4, 152.

transnationally oppressed groups, he nevertheless focused on politics that depended on state and government. For Sharī‘atī, Ḥusayn served as an example for intellectuals by which they might organise the oppressed people of the world against injustice—specifically imperialism and tyranny—before the Messiah’s return.¹⁹⁹ Fadlallah, on the other hand, was primarily concerned neither with state institutions nor overthrowing an incumbent government.

Different from advocating revolution against a state, Fadlallah chose a sermon that emphasises ethics and reform for a brand of governance that disperses accountability among all believers. Sovereignty, or the right to govern, is subordinated in this instance to the duty to command right and forbid wrong. But, then, are we to presume that Fadlallah’s argument is devoid of politics or elements of sovereignty because these appear to be subordinate? We will return to the question of sovereignty in chapter four, but Fadlallah explains after his narration the political significance of the above sermon:

We find in this revolutionary obligation Islam’s position on force, which wants man to take the path of force in the face of injustice and tyranny and to stand decisively against all of [tyranny’s] manifestations; And to keep away from all passive and unfavourable positions, including neutral positions in which the believer is stuck between the oppressor and the oppressed. Because of Islam’s view, the Muslims’ responsibility is not represented by individual commitment to the *sharī‘a*... It extends to a commitment to participate in the administration of justice and the resistance to injustice [within] the *umma*... even through the use of force that imposes change, because the issue of freedom pertaining to the community’s order and safety is not contained in any legislative formula or thought in Islam.²⁰⁰

¹⁹⁹ Shahrugh Akhavi, “Shariati’s Social Thought,” in *Religion and Politics in Iran: Shi‘ism from Quietism to Revolution*, ed., Nikki R. Keddie (New Haven and London: Yale University Press, 1983), 125-143, at 140-41.

²⁰⁰ Fadlallah, *Manṭiq al-quwwa*, 74.

To be sure, Fadlallah later stipulated that a “just *faqīh*” must serve as the delegate of commanding and forbidding by force,²⁰¹ as Khomeini required in his *Tahrīr*, but this is absent from the former’s *Manṭiq al-quwwa*, an absence intended to emphasise communal accountability without a just government.

In Fadlallah’s explanation of this “revolutionary obligation” we find an idea of revolution and freedom unbound by law; this idea is “not contained” according to Fadlallah in “any legislative formula.”²⁰² Khomeini’s sanctioning of martyrdom as an extra-legal and social concept might come to mind when reading the above, but there is another element at play in the above text. Fadlallah is not discussing revolution as a change of state or government as Khomeini had done. He is instead advocating for a change from a neutral or oppressed position to one of power by which justice and responsibility can be inserted into political life. And Fadlallah makes it clear that this cannot be accomplished through law or the intellect but with cooperative participation in a duty: “Commanding the good is one of the most valuable duties in Islamic legislation ... in the administration of justice by the ruler and the ruled.”²⁰³

The contrast of duty and law resonates unexpectedly with Gandhi’s approach to resistance and rights. Faisal Devji explains that Gandhi opposed the idea of “inalienable rights” and argued that rights were dependent on duties, some of which would involve the use of violence. In fact, according to Devji, “it was the moral relationship between enemies as much as between friends that created rights, which

²⁰¹ Faḍlallah, *Fiqh al-sharī‘a: al-‘ibādāt*, 630.

²⁰² Faḍlallah, *Manṭiq al-quwwa*, 74.

²⁰³ Faḍlallah, *Fiqh al-sharī‘a: al-‘ibādāt*, 630.

meant that such relationships had to be emphasized.”²⁰⁴ Husayn’s encounter with his erstwhile enemy, al-Ḥurr, which led to an assertion of a political right, might thus be interpreted also as the discharge of a duty, the result of which was mutual respect and cooperation. Fadlallah later echoes Gandhi’s opposition to inalienable rights with his critique of human rights:

Some may say: If the members of society were given the freedom to impose the obligation of public and private duties contrary to the personal freedom of individuals, as decided by general documents for human rights, it represents a direct assault on that [individual] freedom.

But the answer to that is: Islam does not believe in the absolute freedom of state practice but it stresses committed freedom(s), which are subject to the limits of the *sharī‘a* and the community... where individual freedom converges with collective freedom to represent a unified freedom. And it is this base on which individual neglect of duties is considered the beginning of societal neglect, because individual deviation is the beginning of societal deviation...²⁰⁵

For Gandhi, says Devji, humanitarianism was incompatible with a politics of non-violence because humanitarian intervention on behalf of a third party created a “cult of victims.” The result is the removal of moral agency. With an obligation to behave like moral agents in the face of suffering, the oppressed and thus their oppressors would enter into a political relationship through which threatened values

²⁰⁴ Faisal Devji, “The Paradox of Nonviolence,” *Public Culture* 23, no. 2 (2011): 269-274, at 273.

²⁰⁵ Faḍlallah, *Mantiq al-quwwa*, 158-59. It seems likely that Fadlallah adopted the lexicon of freedom, humanity, and community, from his peer and colleague, Sayyid Muḥammad Bāqir al-Ṣadr. Al-Ṣadr’s *Al-madrasa al-islāmiyya*, first published in 1962, “deals with the extent of human potential to develop a social order guaranteeing [humanity’s] happiness and perfection.” He also examines “Islam’s position toward freedom and security, [as this book is] a comparative study of Islam and capitalism’s position toward freedom and the position of Islam and Marxism toward security.” But al-Ṣadr, the architect and founder of al-Da‘wa, with whom Fadlallah worked in Iraq, was more concerned with modern economic systems as they relate to state and society than with methods of resistance and law. See Sayyid Muḥammad Bāqir al-Ṣadr, *Al-madrasa al-islāmiyya* (Beirut: Dār al-ta‘ārif li-l-maṭbū‘āt, 2011), 7.

might be defended and meaningful goals could be met.²⁰⁶ Of course, Fadlallah had never advocated non-violent politics as Gandhi had promoted, even if the latter accepted that violence was a part of everyday life. Nevertheless, Fadlallah, like Gandhi, attempted an ethical transformation that addressed, and sometimes allowed, violence. Although Foucault used the term “political spirituality” to explain Khomeini’s particular brand of Islamism,²⁰⁷ perhaps Fadlallah’s politics are more aligned with Gandhi’s “spiritualization of politics.” That is, Fadlallah advocated neither revolution against an incumbent regime nor immediate violence, but an ethical “revolution”—to use Fadlallah’s term—that would allow the oppressed to fight for their values on an equal footing to those surrounding them, including their fellow Muslims.

During the Civil War in which diverse factions of Lebanese society fought against one another, Fadlallah understood that commanding and forbidding by the heart and the tongue would not always enable Muslims to fight their oppressors, whether Muslim or Christian. Violent resistance might be necessary in certain cases. “And we find [this] clearly in the verse,” he asserts, “which talks about the responsibility of the community to stand up against oppressive groups in cases of conflict between two communities of believers and a refusal to accept reconciliation...”²⁰⁸ He continues:

If two factions among the believers should fight, then make a settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And when [the faction] returns, then make a just settlement between them...²⁰⁹

²⁰⁶ Devij, “The Paradox of Nonviolence,” 272-73.

²⁰⁷ See previous section on Khomeini.

²⁰⁸ Fadlallah, *Mantiq al-quwwa*, 162.

²⁰⁹ *Ibid.*, 162.

Fadlallah is not completely clear on the particular “factions” to which he is referring. Later he would condemn confessional infighting between Amal and Hizbullah but at this moment, in 1976, it seems likely that he was addressing Muslims who collaborate in the marginalisation (“oppression”) of Lebanese Shi‘i. Despite advocating violence at certain moments, however, there is no evidence that Fadlallah encouraged any form of revolution against the entirety of a state—or the semblance of one. Curiously, his violence appears personal and communal, between neighbors instead of toward impersonal state institutions, embracing in some ways the Civil War’s intimate violence but only for the purpose of genuine and honest reconciliation.

The personal takes other forms in Fadlallah’s idea of commanding and forbidding as well. Like Khomeini, Fadlallah later addressed *ahammiyya* to include communal and individual exceptions to the traditional boundaries of commanding and forbidding by force. Referring to communal violence, he believed it “necessary, in some situations, to bear real damage on oneself or others, if it is known that there is opposition to commanding and forbidding...” In these cases, commanding and forbidding with force must be used in order to “balance the *sharī‘a*,” that is, to expel injustice and corruption and to establish a just system. Fadlallah adds that this must be permitted by a legitimate ruler, or a *marja*’²¹⁰ a position to which he had ascended at the time of publishing these lines in 2002.

Fadlallah also allowed for a forbiddener of wrong to transgress personal boundaries. He deems it acceptable to “perpetrate taboos... like entering a person’s house without permission, staring at or initiating contact when a foreign woman

²¹⁰ Faḍlallah, *Fiqh al-sharī‘a: al-‘ibādāt*, 626.

[commits a sin], or sitting at a table where wine is being drunk.” Unlike the above cases, however, these remain at the discretion of the performer rather than a jurist. He explains that one must examine the importance of these wrongs and their effects on society rather than on the individual, taking into consideration the common good (*maṣlaḥa*).²¹¹

Fadlallah’s “revolution” is meant as reformation in governance and community rather than violent action to overthrow a state. Even if not a revolution in the latter sense, understanding what Fadlallah means by revolution beyond an appealing rhetorical substitute for reform is worth exploration. In his article, “Every Great Revolution is a Civil War,” David Armitage argues that modern revolutions have their roots in earlier models of violent political change, in which contestations of human will and sovereignty were at the centre. The repetitive sequence of violence during the revolutions of old, however, were more often labelled civil wars until the term revolution was used to denote “positive violence” that departed from civil war.²¹² This is not to suggest that Fadlallah’s revolution is archaic. To the contrary, his revolution might be described as both revolutionary and modern.

Fadlallah’s revolution could be considered revolutionary in the contemporary sense of the term because he refers to it in the midst of a civil war, or rather “in contrast to civil war,” when the historiography of civil war had already shifted to

²¹¹ Ibid., 632.

²¹² David Armitage, “Every Great Revolution Is a Civil War,” in *Scripting Revolution: A Historical Approach to the Comparative Study of Revolutions*, eds., Keith Michael Baker and Dan Edelstein (Stanford: Stanford University Press, 2015), 57-68, 269-71.

reject it as a catalyst for positive transformation.²¹³ With his revolution, he advocated positive changes, including just governance to end the war and to open up new possibilities for Lebanon's future. Chief among these were the ways by which communities in the country associate and how Muslims conduct themselves. Ironically, this revolution would not be possible without civil war. But as opposed to civil war's destructive circle of violence, Fadlallah saw in his program an historical end with justice and cooperation. In other words, despite the ongoing violence of the Lebanese Civil War, he advocated violence as an option (not a necessity) for positive change that would place human will at the centre of this change:

...prayer is not considered a means (or a tool for change)... because the role of supplication in Islam is not for situations in which humans have the ability to command the situations' natural causes, but [instead] in cases where there is absolute inability for action or in special arenas where God assists because of supplication. He gives [the subject] strength where there is none and bestows upon him assistance where there is no human assistance. Thus, we understand this kind of progression in the *ḥadīth*, that is, of deviation and neglecting to resist it, reflecting the call to command and forbid to change concepts and perceptions.²¹⁴

Involving human will and ethical action, Fadlallah's community would thus assert its sovereignty not with an authority to govern but with political strength.

Toward the end of the Civil War, Fadlallah began to amend some of his earlier positions, speaking less explicitly of revolution and more of reform. On 23 June 1989 in a Friday sermon titled "Our Responsibility in Facing Corruption and Depravity," he addressed his congregation's "responsibility to reform and to oppose the corrupt."²¹⁵ In this sermon he avoids references to the *ḥadīth* in favour of the Qur'ān and, despite referring to "Muslims," speaks of "us" and "we." This is most clearly an

²¹³ Ibid.

²¹⁴ Faḍlallah, *Manṭiq al-quwwa*, 161.

²¹⁵ Muḥammad Husayn Faḍlallah, *Ṣalāt al-jum'a: al-kalima wa-l-mawqif* (Beirut: Dār al-malāk, 2004), 242.

initiative to reject sectarianism and cooperate together to “participate in reforming the community and to strengthen those who act in order to reform the community...” “God,” he explained, “has burdened you [with the] responsibility to command right and forbid wrong...”²¹⁶ Invoking not only mutual cooperation and leadership, but also non-violence, he added: “you are all shepherds and are all responsible for your flock.”

As violence began to subside, so too did Fadlallah’s attention to it. Violence would no longer be a favoured means of resistance or reform. In fact, collaboration with tyranny would be allowed in certain, though ambiguous, cases: “if the deterrence of performing wrong depends on the employment of the oppressor it is permissible to do it even with the knowledge that the oppressor will exceed the legal limit (*ḥadd*) beyond its acceptable amount in deterrence.” This is so, Fadlallah asserted, except if the damage will be greater than the damage taken. In these cases, one must take into account *ahammiyya*.²¹⁷

Fadlallah’s refusal to reject *ahammiyya* in its entirety is illustrative of his emphasis on the duty as a tool for reform and collective action rather than one of violent self sacrifice, as it was for Khomeini. Fadlallah’s view of commanding and forbidding as paradigmatically collective and social (i.e., to be used for social ethical reform) is in line with Shi‘i (specifically “Twelver”) scholars at least since the tenth century who held that all believers must perform the duty in non-violent ways until the wrong is eliminated. Of course, Fadlallah sanctioned violence but only in limited cases to resolve communal strife where the state had failed. He had explicitly promoted it against the state. And although, according to Cook, the collective

²¹⁶ Ibid.

²¹⁷ Fadlallah, *Fiqh al-sharī‘a: al-‘ibādāt*, 634.

performance of commanding and forbidding also appears to be the mainstream (though not ubiquitous) Mu‘tazilī view, this assertion cannot be proven due to a lack of sources with which to compare.²¹⁸

The ways in which Fadlallah envisioned commanding and forbidding as a communal obligation to maintain the ethical character of a society, to reform its moral deficiencies, and to uphold power’s just use appears almost entirely in line with traditional “Twelver” iterations. Perhaps, therefore, Fadlallah’s reimagining of the concept lies not with changing any principle, even if he allowed for violence, but instead with the duty’s role as a counterbalance to a weak state. It was not, for Fadlallah, a counterbalance in the form of revolution as Khomeini or Sharī‘atī saw it but rather as a counterbalance in the form of another means for governance outside of the parameters of the nation-state. Where commanding and forbidding had never been envisioned as an alternative to codified state law, or the limits of governance codified in law, but in conjunction with it, Fadlallah envisioned the duty as uncoded parameters for governance without state. Yet, it was also entirely fashioned by—and in opposition to—liberal iterations of the state.

Maṣlaḥa...

...in Khomeini’s Thought and Writings

With the success of the Iranian Revolution in 1979 and the establishment of a state that defined the *sharī‘a* as its constitution²¹⁹ came the need for a tool by which the organs of government could determine what is best for the Islamic Republic in practical matters even if it contradicted the *sharī‘a* or state legislation. This novel

²¹⁸ Cook, *Commanding Right and Forbidding Wrong*, 273-274.

²¹⁹ See The Constitution of the Islamic Republic of Iran, Article 2.

method of jurisprudence was labelled *maṣlaḥa* with Khomeini's establishment of the Expediency Council, which, as Sami Zubaida explains, "liberated government decisions and policies from the limits of the *sharī'a*."²²⁰ Although *maṣlaḥa*, as a method for circumventing aspects of the *sharī'a* and as a counterbalance to *mafsada*, had been present in Khomeini's writings at least since his *Vilāyat-i faqīh* in 1970, it was not until 1988 that this brand of *maṣlaḥa* became a permanent fixture of Islamic governance and Shi'i jurisprudence.²²¹

Despite Khomeini's frequent reluctance to refer to *maṣlaḥa* by name in many of his writings, his approach to jurisprudence and government used some techniques of earlier theorists of *maṣlaḥa*. As discussed in the introduction, a controversy arose in the medieval period on the relationship between *maṣlaḥa* and the foundational texts of the Qur'ān and the Sunna. Scholars questioned whether *maṣlaḥa* must take into account these texts or whether the concept could be employed where textual clarity is absent. Methods for employing *maṣlaḥa* differed based on the *sharī'a*'s boundaries and whether these boundaries conflicted with a ruling on the common good. It nevertheless appears that most jurists agreed that the common good must at least be taken into consideration in all cases.

As the introduction to this work explained, the twentieth-century scholar, Rashīd Riḍā, referred to Najm al-Dīn al-Ṭūfī's treatise on *maṣlaḥa* to prioritise that "the injurious is to be warded off and the beneficial preserved." Both Riḍā and al-Ṭūfī attempted to mitigate the possibility of corrupt leaders using *maṣlaḥa* for political

²²⁰ Zubaida, *Law and Power*, 211.

²²¹ *Maṣlaḥa* gained currency in Shi'i jurisprudence only with Khomeini's transformation of the concept. See Liyakat Takim, "Maqāṣid al-Sharī'a in Contemporary Shi'i Jurisprudence," 112.

gain. They argued that the concept must be bound to the law and limited only to matters of human interaction (*mu'āmalāt*). The former also advocated for those scholars who “loosen and bind” the law to keep in check the potential tyranny of rulers.²²² Conversely, Shāh Walī Allāh of India affirmed the benefits of worship (*'ibādāt*) as they relate to worldly matters, arguing that worship is not only a test by which believers prove themselves to God, but also directly related to *maṣlaḥa*.²²³

Khomeini transformed this approach with a subordination of theological precepts to national interest, and thus politics, an approach with a long history in his thought. Perhaps best known is his response to Sayyid 'Alī Khāmīnā'ī (former President of the Islamic Republic and current Supreme Leader; henceforth referred to as Khamenei) after the latter had misinterpreted the role of the *walī al-faqīh* in a 1988 Friday sermon. In a letter to Khamenei, Khomeini wrote:

The Islamic state is a branch of the absolute trusteeship of the prophet... and constitutes one of the primary ordinances of Islam, which has precedence over all other derived ordinances such as prayer, fasting, and the pilgrimage.²²⁴

In fact, the above is simply a reiteration of what Khomeini had addressed years earlier in his *Vilāyat-i faqīh*, first published in 1970:

Islam has come to give order to society. Imamate authority and government is for the regulation of the community. We are required to protect Islam. This task is an important duty; it is even more obligatory than Friday prayer and fasting...²²⁵

In a recent interview titled “Rāh-i ḥal-i nukhust-i fahm-i maṣlaḥat az manzar-i Khumaynī murāji' bih akṣaryat būd (The Solution of the Original Understanding of

²²² Zaman, *Modern Islamic Thought*, 111-12.

²²³ *Ibid.*, 109-12.

²²⁴ *Mu'assasa-yi tanzīm va nashr-i āṣār-i Imām Khumaynī*, “Nāma-hā-yi Imām va ra'yīs-i jumhūr-i vaqt dar khuṣūṣ-i vilāyat-i faqīh” (n.d.); Zubaida, *Islam and Power*, 211.

²²⁵ Khumaynī, *Vilāyat-i faqīh*, 71.

Maṣlaḥa from [Khomeini]’s Perspective was Reference to the Opinion of the Majority),” Ayatullah Akbar Hāshimī Rafsanjānī (Rafsanjani from here; d. 2017), first Chairman of the Iranian Parliament (1980-1989), former President of the Islamic Republic (1989-1997), and former Chairman of the Expediency Council (from its establishment in 1989-2017), details the juridical methods that he and Khomeini used to assess *maṣlaḥa* according to the suitability of the laws passed by the Islamic Republic’s parliament. The interviewer begins by asserting the importance of ‘*urf*’ (common or customary law),²²⁶ arguing, “there is currently a lack of understanding of this concept, without which an understanding of the... reality of the Islamic Republic from the perspective of Khomeini is impossible.”²²⁷ He thus proposes an intimate link between ‘*urf*, *maṣlaḥa*, and governance.

In addition to highlighting an essential conceptual connection in the Islamic Republic’s institutional and intellectual history, this section will use Rafsanjani’s interview to address a gap in Western scholarship. Despite the vast attention paid in Western scholarship to Sunni iterations of *maṣlaḥa* and Khomeini’s *Guardianship of the Jurist*, there is a dearth of research on what some Iranian scholars and journalists understand to be indispensable to the Islamic Republic’s apparatus of government.²²⁸

²²⁶ ‘*Urf*, translated literally as “custom,” is the domain of law that is more commonly known as “common” law, which deals with public security, matters of state interest, theft, rebellion, etc... This is distinguished from *shar‘*, which denotes a religious domain of law that is under the purview of a *mujtahid* who is qualified to interpret the *sharī‘a*. Hamid Algar notes that historically these domains have seldom been completely separated and often overlap. See Hamid Algar, *Religion and State in Iran in 1785-1906: The Role of the Ulama in the Qajar Period* (Berkeley and Los Angeles: University of California Press, 1969), 11-14.

²²⁷ *Rūznāma-yi Sharq*, “Rāh-i ḥal-i nukhust-i fahm-i maṣlaḥat az manẓar-i Khumaynī murāji‘ bih akṣaryat būd” (10 October 2016).

²²⁸ One of the more recent studies on *maṣlaḥa* in Khomeini’s thought is a University of Tehran Ph.D thesis that I have not yet been able to obtain. See Furūtqa, “Barrisi-yi muqāyisa-yi mafhūm-i maṣlaḥat-i dawlat.”

The following shows that *maṣlaḥa* is an essential component of Ayatullah Khomeini's thought and a tool for governing the Islamic Republic.

It is important to note that this section relies heavily on Rafsanjani's interview, among other sources, some of which are far removed from the first decade of the Islamic Republic and the beginnings of the Expediency Council. They should not be taken as definitive history. However, that *maṣlaḥa* figures so prominently in Rafsanjani's later thought should not be taken as trivial. This is an important reflection of the concept's role as a contemporary political and legal—and even existential—instrument rather than a personal one for self-interest. For if *maṣlaḥa* has a personal component at all, it is in the service of the state as an autonomous, sovereign entity.

Rafsanjani, Khomeini's long-time confidant, recalls that as early as the parliament's initial actions there was disagreement between parliamentary members and the Guardian Council, which is tasked with reviewing legislation in accordance with the *sharī'a* and the Constitution. In a letter to Khomeini on 19 October 1981 Rafsanjani complained to the Supreme Leader about the deadlock created by the contradiction between secondary ordinances of the *sharī'a* and parliamentary bills, most of which concerned land, agriculture, and state commerce.²²⁹ Rafsanjani wrote:

A portion of the laws, which are approved by parliament, relate to the overall organisation of orders and the necessity to safeguard interests (*maṣāliḥ*) while expelling corruption (*mafāsīd*). These laws must be implemented temporarily in accordance with the secondary ordinances of the *sharī'a*. The text is related to Islamic precepts and policies, of which the *sharī'a* does not permit abandonment. Regarding these rules, there is a need for the approval and

²²⁹ Hāshimī Rafsanjānī, *‘Ubūr az buḥrān* (Tehran: Nashr-i ma‘ārif-i inqilāb, 2008), 264.

authority of the Supreme Leader who oversees agreement with the Constitution and the three branches of government...²³⁰

Khomeini responded:

Whatever interferes with the maintenance of the Islamic Republic, the doing or abandonment of which disrupts the system, and whatever is necessary to do or abandon that is related to corruption or sin is an issue that is to be assessed (*tashkhiṣ*), passed, and implemented by a majority of the parliament provided that it is cancelled after the issue is settled. It must be stipulated that anyone opposing the limits (*ḥudūd*) [of the *sharī'a*] is to be labelled as an offender and liable to religious and legal punishment.²³¹

With this correspondence, Khomeini had defined a method for assessing and implementing *maṣlaḥa*. On the one hand, he endowed the parliament with the power to assess and implement what is in the best interests of the Islamic Republic. On the other hand, the parliament was given authority to override the secondary ordinances of the *sharī'a* with a majority, rather than with a consensus. This meant that it could interpret common law while rejecting previous mechanisms of jurisprudence, a position that was met with disapproval from the Guardian Council, as Rafsanjani recalls, but also from Gulpāygānī. In an unpublished telegraph to Khomeini, Gulpāygānī expressed concern over the authority given to the parliament for assessing and ruling on issues of common law, potentially of overstepping the limits and ordinances of the *sharī'a*.²³² Khomeini responded, explaining that the Guardian Council does not have the right to identify subjects of common law or religious law, or even to define what is and is not a secondary or primary ordinance of the *sharī'a*, but rather to intervene when there is a mistake or disagreement in the parliament. He supported this explanation, saying that while there is no threat to Islam or Islamic governance from his “side” (read: supporters), there is a great threat from the

²³⁰ *Rūznāma-yi Sharq*, “Rāh-i ḥāl-i nukhust-i fahm-i maṣlaḥat”; Rafsanjānī, ‘*Ubūr az buhrān*, 264.

²³¹ *Ibid.*

²³² *Rūznāma-yi Sharq*, “Rāh-i ḥāl-i nukhust-i fahm-i maṣlaḥat.”

landowning elite who have put in place laws—even ones that agree with primary and secondary Islamic ordinances—supporting corruption and “European debauchery.”²³³

Rafsanjani’s interviewer proceeds to remind us about Khomeini’s proclamation that “the parliament is the one true thing that is situated at the head of all affairs that are in the country,” and “the criteria [for this position] is the nation’s vote.” Accordingly, as Rafsanjani adds, specialists are the representatives of common law, which is the common law of experts and not *necessarily* that of the people. This suggests that parliament has the prerogative “to elucidate the concept of ‘republic’ in the apparatus of jurisprudence and the thought of the Imam.” Or, in other words, the parliament can come to a conclusion vis-à-vis legislation whereby a law might be passed if it maximises *maṣlaḥa* and diminishes *mafsada*, even if it contradicts a primary ordinance (*ḥukm awwaliyya*).²³⁴

Although this approach to *maṣlaḥa* in Khomeini’s theory of governance had been present since at least 1970, we see the Expediency Council’s nascent beginnings almost a decade before its establishment. Remarkable about Khomeini and Rafsanjani’s position toward the parliament is that together they attempted to consolidate authority among those who legislated and governed according to the exigencies of a modern state rather than simply among a clerical class. As Rafsanjani’s interviewer suggested, Khomeini and Rafsanjani applied to governance Riḍā’s principle of warding off the injurious and preserving the beneficial. At the same time, they were able to accomplish what early twentieth-century Sunni

²³³ Rūḥallah Khumaynī, *Ṣaḥīfa-yi Imām* vol. 15 (Tehran: Mu’assasa-yi tanẓīm va nashr-i āṣār-i Imām Khumaynī, n.d.), 311-12.

²³⁴ Rūḥallah Khumaynī, *Ṣaḥīfa-yi Imām* vol. 18 (Tehran: Mu’assasa-yi tanẓīm va nashr-i āṣār-i Imām Khumaynī, n.d.), 282; *Rūznāma-yi Sharq*, “Rāh-i ḥal-i nukhust-i fahm-i maṣlaḥat.”

reformists were not able to do, that is, to “bypass religion.” According to Ahmad Dallal, Sunni reformists like Riḍā attempted to bypass religion but “their insistence on providing Islamic legitimation for each and every institution of the modern European nation-state in effect produced a pervasive and all-encompassing Islamic discourse that claims, without historical justification, to cover all aspects of life.”²³⁵ Khomeini and Rafsanjani, in other words, eschewed justifications like those of their predecessors for decision-making.

The principle of warding off the injurious and preserving the beneficial resonates most clearly with Rafsanjani’s endeavour to safeguard interests (*maṣāliḥ*) while expelling corruption (*mafāsīd*).²³⁶ But more significantly, it mirrors the triumph of *maṣlaḥa* against *mafsada* as a key component of commanding and forbidding. The significance of this is further explained in the final section of the current chapter, but it is worth noting here that there is also an ethical component justifying the legislative use of *maṣlaḥa* to circumvent tradition. And this justification involves anything but total Islamic legitimation.

Against both Khomeini and Rafsanjani’s expedient interpretation of *maṣlaḥa* on the one hand, and Riḍā’s reformist interpretation on the other, is the Syrian al-Azhar educated scholar, Muḥammad Sa‘īd Ramaḍān al-Būṭī (d. 2013). Al-Būṭī, writing in 1965, attempted to wrest *maṣlaḥa* away from government legislation and reform of textual rulings. He opposed the use of *maṣlaḥa* as determined by people’s customs (*‘urf*), for which Khomeini and Rafsanjani argued, but accepted that with

²³⁵ Ahmad Dallal, “Appropriating the Past: Twentieth-Century Reconstruction of Pre-Modern Islamic Thought,” *Islamic Law and Society* 7, no. 3 (2000): 325-358, at 337.

²³⁶ Rafsanjānī, *‘Ubūr az buḥrān*, 264.

proper textual support from the Qur’ān and the Sunna *maṣlaḥa* must apply to a need to improve religion, life, intellect, progeny, and property. For al-Būṭī, a ruling on *maṣlaḥa* had to be based on *tashkīḥ* (in this case, “specification”), which involves textual evidence and allows for the circumvention of secondary ordinances of the *sharī‘a* if necessary.²³⁷ Khomeini used this very method to argue further that the actions of *walī al-faqīh* have no relationship to the *sharī‘a*’s secondary ordinances, the abrogation of which is the prerogative of parliament, which, with a majority, can rule based on exigency (*iẓtirār*). This notion of exigency also provided the basis on which not only secondary, but also primary, ordinances can be suspended—the issue about which Gulpāygānī disagreed most.²³⁸

It was perhaps the ambiguity of Khomeini’s pronouncements on *maṣlaḥa* that engendered Gulpāygānī’s, among others’, disagreement. Not until 1988, with the Expediency Council’s establishment, would *maṣlaḥa* unequivocally refer to Khomeini’s tool for discerning legislation that is in the best interest of the Islamic state. At the same time, it is precisely this ambiguity that gave Khomeini the authority to interpret *maṣlaḥa* against its prior uses. Unlike al-Būṭī, Riḍā, or others who theorised about *maṣlaḥa*, Khomeini never clarified a method for its use. If he had written as extensively on *maṣlaḥa* as some of his clerical predecessors had done, he would have been obliged to justify its dependence on, or independence from, the Qur’ān and Sunna, resulting in criticism based not on governance but on matters of jurisprudence from those who were arguably better schooled in *fiqh*. Instead, Khomeini took advantage of *maṣlaḥa*’s relative deficiency in texts.

²³⁷ Felicitas Opwis, “Maṣlaḥa in Contemporary Islamic Legal Theory,” *Islamic Law and Society* 12, no. 2 (2005): 182-223, esp. 213-16.

²³⁸ *Rūznāma-yi Sharq*, “Rāh-i ḥal-i nukhust-i fahm-i maṣlaḥat.”

Essential to Khomeini's *maṣlaḥa* is that despite its ostensible marginality in *fiqh*, those who wrote about it acknowledged that it is indispensable to interpreting the *sharī'a* as it relates to worldly matters. For instance, drawing on al-Ghazālī (d. 1111), the Egyptian al-Azhar-educated scholar Yūsuf al-Qaraḍāwī attests that *maṣlaḥa* is the goal of the *sharī'a*. He employs *maṣlaḥa* only when there is no clear ruling from the Qur'ān, *ḥadīth*, or *ijmā'*.²³⁹ Al-Qaraḍāwī also disagrees with al-Būṭī, arguing for legislation (i.e., codified law) with *maṣlaḥa* as a way by which those who “loosen and bind,” to use Riḍā's phrase, might also maintain checks and balances on a ruler. Unlike al-Qaraḍāwī and his other contemporaries, however, Khomeini avoids references to the Qur'ān or Sunna. What all seem to agree on is that *maṣlaḥa*, in all its ambiguity, is both marginal and essential.

The paradox of marginality and essentiality might best be resolved by Jacques Derrida's (d. 2004) concept of the “supplement.” In *Of Grammatology*, first published in 1967, Derrida argued that writing is “the critical response to a situation of distress” in which speech fails to “protect presence” and nature is interrupted. According to Derrida, speech is the natural expression of both existence and presence, while writing—an unnatural phenomenon—is added to speech in order to represent thought. In other words, writing is an addition to the unavoidable representation of a concept. The supplement can be summarised in the following terms: is it a part which is added to a whole in order to make the whole complete. But herein lay another paradox: the

²³⁹ Yūsuf al-Qaraḍāwī, *Dirāsa fī fiqh maqāṣid al-sharī'a: bayn al-maqāṣid al-kulliyya wa-l-nuṣūṣ al-juz'iyya* (Cairo: Dār al-sharūq, 2006), 109-113. See also Zaman, *Modern Islamic Thought*, 116-17.

supplement “accumulates presence” by taking the place of its natural antecedent.²⁴⁰ The supplement is, in a way, an imposter of that which is original or natural; it is at once exterior and inferior to nature. As a result, writing, as speech’s imperfect supplement, ends up determining all conceptual oppositions to speech; writing, as such, is the only means through which diachronical debates can occur.

To be sure, Derrida was responding to a corpus of literature on Western metaphysics, which, as he argued, “always assigned the origin of truth in general to the logos: the history of truth, of the truth of truth, has always been... the debasement of writing, and its repression outside ‘full’ speech.”²⁴¹ Although “full” speech—the expression of concepts and history in their true form—is preferable to its imperfect expression in writing, there is no alternative for Derrida. But he was not critiquing this phenomenon. He was instead explaining it and, in his section, “...That Dangerous Supplement...,” showing how history and existence are both threatened (with a “dangerous supplement”) and maintained—in Western culture and metaphysics—through imperfect yet necessary substitutions.

In the case of our present discussion, *maṣlaḥa* functions as a Derridean supplement to law, the *sharī‘a*. I am not arguing that Derrida directly informed Khomeini’s thought but rather, as contemporaries, they were responding in similar ways to their respective crises. For Khomeini, *maṣlaḥa* is a response to a crisis of governance, while being outside of the *sharī‘a* and essential to it. But if the *sharī‘a* is

²⁴⁰ Derrida, *Of Grammatology*, 144.

²⁴¹ *Ibid.*, 3.

presumably complete, then what function might *maṣlaḥa* serve?²⁴² Put simply, for Khomeini and the Islamic Republic, *maṣlaḥa* provides a modern way to govern. Its connotation in writing has many conceptual definitions including “benefit” as an opposite to “corruption,” “interest,” “welfare,” and “common good.” The term itself is unable to represent in perfection any of these concepts because of its versatility, a testament to its controversy among jurists and its theorists, but there is no alternative way of explaining Khomeini’s use of it. If not for the crisis of governance toward the end of Khomeini’s life, perhaps his notion of *maṣlaḥa* would have continued as vague and barely detectible. Yet, there was necessity, an existential crisis of the state, which called for the written—or authored—manifestation of *maṣlaḥa*. In other words, *maṣlaḥa* modernises Islamic governance by justifying the state’s superiority to those elements of the *sharī‘a* that would hinder it.

Perhaps, then, with the above interpretation of *maṣlaḥa*, the *sharī‘a*, as both an ideal and idea, is not rendered imperfect but man’s implementation of it is instead accepted as imperfect. For the *sharī‘a*’s perfect implementation is to come only with the Messiah’s arrival on the Day of Judgement. *Maṣlaḥa*, for Rafsanjani and Khomeini, thus accounts for contingencies in an imperfect and anticipatory world, a world not of nature and society but a world of law and politics. *Maṣlaḥa* is thus essential to the Islamic Republic’s existence precisely because it is marginal and does not possess an ideal character or “original” existence as something in nature would possess. This is not to argue that the *sharī‘a*’s primary and secondary ordinances are derived from nature, but rather that they emanate from an incontestable ideal. Neither

²⁴² Derrida asks: “How is a natural weakness possible? How can Nature ask for forces that it does not furnish?” Derrida, *Of Grammatology*, 146. If we rephrase this question, it might read: How is a weakness in the *sharī‘a* possible? How can it ask for that which is not provided in the Qur’ān and Sunna?

does this argument presume complete consistency between Khomeini and Rafsanjani, on the one hand, and Derrida on the other. The former pair liberated themselves from a limited tradition of jurisprudence with their own authored supplement while the latter's supplement explained the limits of a tradition. This difference is most evident in the events leading up to the institutionalisation of *maṣlaḥa* in the Expediency Council.

Khomeini's *maṣlaḥa* became permanently institutionalised in 1988 after 'Abdul-Karīm Mūsawī (former Chief Justice and Assembly of Experts member; d. 2016), Khamenei, Aḥmad Khumaynī (the Supreme Leader's son and close confidant; d. 1995), Mīr-Ḥusayn Mūsawī (former Prime Minister of Iran), and Rafsanjani authored a joint letter to Khomeini decrying endless deliberation in ministries and parliament. The letter was written amidst rumours that Khomeini was in the process of establishing an institution to resolve disagreements with between the parliament and the Guardian Council. Acknowledging that while problems with the legislative process and administering Islamic society were theoretically resolved, the authors suggest that there is a larger issue. They explain that after initial legislative deliberations, "the Guardian Council also expresses its view within the framework of religious laws or the Constitution. In some cases its opinion is concordant with the parliament, while in others it is not." For cases about which the Guardian Council disagrees "the parliament and the Guardian Council are unable to arrive at an agreement" and a Guardian Jurist's interference is needed in order to "identify the subject of administrative law." The source of this disagreement is "the views of the

experts that conceive the subject of Islamic laws and the generality of the Constitution.”²⁴³

Khomeini responded cautiously, initially disagreeing with the need for a new assembly. But he then acquiesced, noting that there is need for a “precautionary measure in the case that there is disagreement based on common and religious law” because the “expediency of the system and the people are among the important affairs... [among which includes] opposing the triumph of the American Islam of arrogant tyrants with millions of dollars of backing as well as external and internal agents.” Once again, we encounter a subordination of religious law to common law for the sake of the common good (*maṣlaḥa*) but Khomeini also emphasised that expediency is true to Islam, placing the concept in a global political arena.²⁴⁴ While Saudi Arabia, according to Khomeini, promotes a system of tyranny and Western imperialism under the guise of Islam, the Islamic Republic interprets Islam for the sake of the “weak and downtrodden.” He thus invoked expediency as a double edged sword, on the one hand to attack what he defined as the American brand of Islam in Saudi Arabia, and on the other to justify any decision with *maṣlaḥa* as derived in some way from Islamic principles for the benefit of the people.²⁴⁵ For Rafsanjani, this letter expresses the sentiment that “one cannot wait but must make a decision,” which echoes Khomeini’s criticism of his contemporaries after he announced the establishment of the Expediency Council: “if a person is extremely knowledgeable in

²⁴³ Rūḥallah Khumaynī, *Ṣaḥīfa-yi Imām* vol. 20 (Tehran: Mu’assasa-yi tanzīm va nashr-i āṣār-i Imām Khumaynī, n.d.), 474.

²⁴⁴ Ibid.

²⁴⁵ Eskandar Sadeghi-Boroujerdi has convincingly argued that Khomeini’s 1988 fatwā, discussed above, “to some extent originated directly from Iran’s numerous disputes with the Saudi kingdom.” Eskandar Sadeghi-Boroujerdi, “From Etelā’āti to Eslāhtalabi: Sa’id Hajjarian, Political Theology and the Politics of Reform in Post-Revolutionary Iran,” *Iranian Studies* 47, no. 6 (2014): 987-1009, at 991.

matters concerning seminaries, but cannot determine what is good for society... or in general lacks the necessary wisdom in social and political issues, that person is not a jurisconsult [or Faqīh]...’’²⁴⁶

Khomeini’s above statement was in fact a response to Ḥujjat al-Islām Anṣārī Kirmānī’s letter expressing concern over rivalries between various factions, primarily among the Principlists (*jināh-i uṣūl-girāyān-i jumhūrī-yi islāmī*) whose leadership consisted of high-ranking government clerics including Rafsanjani, Mūsawī, and Khamenei. At the time of Kirmānī’s letter, Khomeini’s health had begun to deteriorate and his supposed successor, Ayatullah Muntazirī (d. 2009), had been chosen.²⁴⁷ These rivalries, Kirmānī asserted, were detrimental to the Islamic Republic’s system and could be resolved only by the Supreme Leader. Anoushiravan Ehteshami argues that Khomeini’s refusal to take sides or condemn the infighting contributed to its destabilising effects.²⁴⁸ This may be true, but more significant is that Khomeini’s position indicates a willingness to allow for various interest groups and discussions in public space, however limited they might have been. It also indicates that Khomeini, though having already formed a position on *maṣlaḥa*’s relationship with Islam’s primary ordinances, was very much subject to public debates within and without state institutions.

In April 1989, weeks before his death, Khomeini announced the need for constitutional amendments. Among the proposed amendments were not only the

²⁴⁶ Ehteshami, *After Khomeini*, 20.

²⁴⁷ Ayatullah Muntazirī resigned from his position as Khomeini’s designated successor in March 1989. The Assembly of Experts subsequently chose Khamenei as *walī al-faqīh*.

²⁴⁸ Ehteshami, *After Khomeini*, 19-20.

removal of the office of Prime Minister and the removal of the stipulation that the *walī al-faqīh* be a *marja'*, but also the permanent codification of the Expediency Council in law. Against codifying the Expediency Council was Ayatullah Muntaziri, who described the council shortly before his resignation as “an institute contrary to the constitution which was set up owing to the existing necessities and the war...in the future all affairs will be managed in accordance with the Constitution.”²⁴⁹ Yet, in his interview Rafsanjani does not cite the Iran-Iraq War as a justification for the Expediency Council’s existence. Instead, he accepts that once the council was established, there was no need to return to Khomeini’s previous decision in which a parliamentary majority would determine *maṣlaḥa*. According to Rafsanjani, those who served on the Constitutional Review Panel had the same reservations as Khomeini regarding the Expediency Council’s necessity. Furthermore, they did not want to foment additional disputes on Khomeini’s rulings.²⁵⁰

Despite Rafsanjani’s potent influence on Khomeini’s *maṣlaḥa*, the former’s effect and narrative should not be overstated. Khomeini was undoubtedly well-aware of the Islamic Republic’s needs, particularly the need to rule based on the common good of the state. He found in *maṣlaḥa* a means by which tradition could undergird a tool for freedom from the very tradition that might seek to limit good governance. He appears, however, to have waited for a crisis of governance. On the one hand, he established an apparatus that would fill his posthumous void and to rule on the common good after his death. On the other hand, he also facilitated a general consensus on the necessity of the Council’s establishment with marginal opposition.

²⁴⁹ Ibid., 35.

²⁵⁰ *Rūznāma-yi Sharq*, “Rāh-i ḥāl-i nukhust-i fahm-i maṣlaḥat.”

To conclude this section, Khomeini's use of *maṣlaḥa* cannot and should not be defined as a Mu'tazilī. Nor should he be defined as having Ash'arī tendencies. He departed from his juristic forbearers in many ways. Khomeini neither restricted *maṣlaḥa* to textual rulings nor defined it as a reward in the afterlife for an obedient believer, as al-Baṣrī and al-Jaṣṣāṣ had done respectively. On the other hand, Khomeini never attempted to develop a method for *maṣlaḥa* that could address all human experience, as some Ash'arī jurists attempted. While Ash'arī theology came to dominate Sunnism, on the one hand, and Twelver jurists incorporated Mu'tazilī and Ash'arī views into their philosophy and jurisprudence on the other hand, *maṣlaḥa* remained a common Sunni tool but mostly disappeared in Twelver jurisprudence.

Yet, parallels exist. If one were to draw a line from early debates on *maṣlaḥa* between its Mu'tazilī and Ash'arī theoreticians down to Khomeini, one might argue—with caution—that Khomeini's ideas on *maṣlaḥa* are more similar to early Ash'arī methodologies than Mu'tazilī ones, despite the frequent label of Mu'tazilī as “rationalist.” However, Khomeini's ideas of free will and God's justice are perhaps closer to Mu'tazilī theology while his poetry and his views on esoteric aspects of Islamic law—discussed in the next chapter—are closer to Ash'arī sufism.

For Khomeini, *maṣlaḥa* was primarily a tool to assess the good, which accordingly should be realised in earthly life through just government. He was less concerned with method than was al-Shāṭibī, who required a survey of all available texts before a one could rule on *maṣlaḥa*. (Such a method surely would have failed in the Islamic Republic.) But Khomeini applied *maṣlaḥa* as a pillar of good (read: moderate) governance, as Riḍā had theorised, and defined it as the goal of the

sharī'a, as al-Ghazālī had done, without strict adherence to the Qur'ān and Sunna. But Khomeini's immediate post-revolutionary method for using *maṣlaḥa* as a parliamentary tool was unprecedented not only because, prior to the Islamic Republic, it had only been theorised as a tool without practice, but also because it involved the opinions—though not ultimate judgement—of laymen.

Khomeini therefore asked some of the same questions related to *maṣlaḥa* as those before him: What is God's will and how is His justice defined? What is the goal of the law? With what means might jurists assess divine law? But he established new paradigms for the concept's use as fashioned by his revolutionary context and state politics—a context that was unprecedented in *maṣlaḥa*'s application. As we will see, Fadlallah differed from Khomeini by envisioning *maṣlaḥa* as a means to balance the *sharī'a* and interpret the Qur'ān for social welfare—thus drawing on legal methods for social justice—instead of as a means to establish a new ethos of state-based legal principles.

...in Fadlallah's Thought and Writings

Nearly twenty years before the Expediency Council's establishment, Muḥammad Bāqir al-Ṣadr formed the al-Da'wa Party in Iraq. Preoccupied with creating an Islamic state from the one in which Saddām Ḥusayn's secular-nationalist Ba'th Party ruled, al-Ṣadr, one of Fadlallah's closest colleagues, questioned many of the positions of Islamic jurisprudence on state and society. Al-Ṣadr studied under Ayatullahs al-Khū'ī and Muḥsin al-Ḥakīm (d. 1970) with whom he maintained close relationships and from whom he often sought advice and debate.

In an exchange recorded in al-Ṣadr's biography, *Al-sīra wa-l-masīra fī ḥaqā'iq wa-wathā'iq*, he discussed with al-Khū'ī the issue of *ḥadd al-ridḍa* (the limit of apostasy). Al-Ṣadr's concern was how the *ḥadd* relates to a newly established Islamic state's legislation after a period of widespread communism. Al-Ṣadr began arguing for the initial necessity of an organised movement: "Without the existence of an organised party embraced by the family of the Prophet and true Islam from whence the Prophet came," al-Ṣadr tells al-Khū'ī, "the establishment of a state is impossible." Al-Khū'ī agrees, "this must be so." But when al-Ṣadr considered repentance for *al-murtadd al-fiṭrī* (apostates who abandon Islam), repentance for which goes against scholarly consensus, versus repentance for *al-murtadd al-millī* (apostates who leave a sect of Islam for another sect), al-Khū'ī responds that the former should be executed while the latter can repent within three days but must be executed on the fourth. Al-Khū'ī agreed with consensus but al-Ṣadr challenges him.²⁵¹

According to al-Ṣadr, "the debate [with al-Khū'ī] focused on atheist communists, and those who, according to the norm, are *al-murtadd al-fiṭrī*." Pressing al-Khū'ī, al-Ṣadr asked, "if we have established an Islamic state, are we to arrest them? Are we to evaluate them based on the limit (the *ḥadd*) and kill them?" He then concludes that "this is not practical." Eventually, the debate turned to jurisprudence and al-Khū'ī reportedly ended up agreeing with his student.²⁵² But what method might al-Ṣadr have used to come to his conclusion? Surely the notion of "practicality"

²⁵¹ Muḥammad Bāqir al-Ṣadr, *Al-sīra wa-l-masīra fī ḥaqā'iq wa-wathā'iq* vol. 1 (Beirut: Mu'assasa al-ma'ārif al-maṭbū'āt, 2006), 283. I would like to thank Shaykh Muḥammad Zarāqat, the head of The Centre of Civilisation for Islamic Thought and Development in Beirut, for referring me to this anecdote.

²⁵² *Ibid.*, 284.

is important but even al-Khū'ī would have agreed that practicality does not necessarily equal juridical soundness.

The Lebanese Shaykh Ḥusayn al-Khishin recently published an article, titled “Dawr al-zamān wa-l-makān fī taghyir ḥadd al-ridda aw tajmīduhi ‘alā ḍaw’ ru’iyyat al-shahīd al-Ṣadr (The Role of Time and Place in Changing the Limits of Apostasy or Freezing it in Light of al-Ṣadr the Martyr’s View).” He argues that al-Ṣadr’s method introduced a new opinion in cases of apostasy. For al-Ṣadr, executing apostates has historical roots in communities in which “individual relationships with the state were based on religious affiliation because the state” was considered religious in structure and “in such a state, one cannot separate belonging to a religion and belonging to the state.” Apostasising from the religion would thus be paramount to “abandoning” the state and its very foundation, i.e., treason. But today, al-Khishin notes, where religious affiliation no longer governs the relationship between the individual and the state, where all types of people are citizens and where religious affiliation is not governed by state relations but rather by their citizenship, complete choice of religion is available for individuals. Religious choice does not affect the relationship between the individual and the state because the state is no longer based on a religious identity.²⁵³

Al-Khishin proposes two primary reasons for accepting this new opinion. The first is that “time and place” are necessary conditions, not for dropping the system of limits (*ḥudūd*) and punishments (*‘aqūbāt*), but for changing the quality and type of

²⁵³ Ḥusayn al-Khishin, “Dawr al-zamān wa-l-makān fī taghyir ḥadd al-ridda aw tajmīduhi ‘alā ḍaw’ ru’iyyat al-shahīd al-Ṣadr,” *Bayynat* (24 April 2010). URL: <http://arabic.bayynat.org/ArticlePage.aspx?id=16518>.

punishment. The second is that these limits and punishments are enforced for *maṣlaḥa* and the expulsion of corruption, debauchery, and tyranny. This was al-Ṣadr's method for assessing contemporary apostasy, which he labels "*al-ridda fī zaman al-shubuhāt* (apostasy in the time of doubts)," i.e., for a time during which doubts within and without Islam were growing and infidel propaganda against Islam was becoming more popular. The most prominent example of this, says al-Ṣadr, is the Soviet Union where atheism flourished at the expense of Islam.

Fadlallah credited al-Ṣadr as a major influence in his life during the early 1960s Iraq when the former wrote for the *Ḥizb al-da'wa* editorial, *Al-aḍwā'*.²⁵⁴ And, to be sure, Fadlallah used a similar methodology when interpreting law.²⁵⁵ This is not to suggest that he emulated al-Ṣadr but rather that they have a similar approach to law. Fadlallah understood *maṣlaḥa* as a way to expand the *sharī'a* where the Qur'ān and Sunna do not provide guidance, as some Sunni jurists had done, but he neither limited the *sharī'a*'s applicability to Muslims alone nor adhered to the orthodoxy of his teachers. In his 2009 edition of *Al-masā'il al-fiqhiyya* he would later interpret the *sharī'a* as a guiding source, not only for Muslims, but also for humanity and its interests. Compiled from his articles in the Da'wa Party editorial, *Al-aḍwā'*, Fadlallah published the first edition of *Qaḍāyānā 'alā ḍaw' al-Islām* in late 1960. Although he maintained distance from the Da'wa Party and its leadership, he nevertheless participated in disseminating its ideology.²⁵⁶ Contrary to Da'wa leader al-Ṣadr's revolutionary leanings, Fadlallah's writings avoid direct calls for revolution and he would later diverge from al-Ṣadr and Hizbullah's endorsement of *wilāyat al-faqīh*.

²⁵⁴ The two also studied under the same teachers, Ayatullahs al-Khū'ī and al-Ḥakīm. See Surūr, *Al-'allāma Faḍlallah*, 49-50.

²⁵⁵ See Sankari, *Fadlallah*.

²⁵⁶ *Ibid.*

In a section of *Qaḍāyānā ‘alā ḍaw’*, titled “Bayn al-maṣlaḥa wa-l-mafsada (Between Benefit and Corruption),” Fadlallah addressed Islam’s role in the public sphere vis-à-vis its fight against infidels and its promotion of free thought. He states: “[Islam is not limited] to burning books in which aberrations are contained... Islam believes that the domain of freedom facilitates a scientific and cultural atmosphere.”²⁵⁷ With a consideration of time and place, Fadlallah established *maṣlaḥa* as something that is achieved and known with rationality. He credited Islam with an equal or stronger ability than its enemies in providing a space of intellectual strength. But he also warns against that which corrupts and calls for a defence against it, much like the ethical precept commanding right and forbidding wrong.

In this defence, he placed the Qur’ān as the “truth” for which the “only means of arrival” is dialogue.²⁵⁸ Doing so, he attempted to position Islam on equal ideological footing with modernising forces in Iraq, and thus global political currents, in order to reform the “thought” and “rationale” of Iraq’s Muslims. Ibrahim M. Abu-Rabi’ argues that Fadlallah’s concern is neither with “*‘ilm* nor sacred knowledge in its metaphysical, theological, and exegetical aspects... but the role of the *‘ulama* as an engaged segment of society that is committed to moving society forward.”²⁵⁹ But it is precisely the *‘ulamā’*, as an engaged segment of society, who employ *maṣlaḥa* in order to adapt to modern circumstances sacred knowledge in its metaphysical, theological, and exegetical aspects.

²⁵⁷ Fadlallah, *Qaḍāyānā*, 80.

²⁵⁸ *Ibid.*, 80.

²⁵⁹ Abu-Rabi’, *Intellectual Origins of Islamic Resurgence*, 222.

In his multi-volume exegesis, *Tafsīr min waḥī al-Qur’ān*, Fadlallah used *maṣlaḥa* to reinterpret the Qur’ān for a wide audience of Muslims, specifically those who lived through civil war. He explained in his interpretation of *Sūrat al-fātiḥa* the meaning of *maṣlaḥa* as it relates to human interest and to that which the Qur’ān enjoins. For Fadlallah, the straight path as expressed in *Al-fātiḥa* “is a spiritual (*ma’ nawī*) line that moves through the human” and is affected by interactions and relationships. *Al-fātiḥa*’s goal is to “move [this] line [according] to God’s commands and prohibitions (*awāmir Allah wa-nawāhīhu*) and to form it [according] to His method.”²⁶⁰ In other words, for Fadlallah, this framework entails two goals: The first is human obedience to God’s path. The second is the “legislative balance” of God’s laws on earth and in paradise. This legislative balance serves human interest (*maṣlaḥat al-insān*), in both its spiritual and material forms to benefit art, the spirit, the individual, and society in public and private affairs.²⁶¹ It is precisely this idea of legislative balance by which Fadlallah used *maṣlaḥa* to interpret the *sharī’a*.

Fadlallah’s methodology for using *maṣlaḥa* is in some ways commensurate with al-Ghazālī’s legal analogy to extend or change the law in new circumstances. For example, killing fellow Muslims in battle might be permitted if the greater Islamic community depends on it. Al-Ghazālī accepted that existing textual rulings based on the Qur’ān and Sunna could be changed with this method only if there was certainty in *maṣlaḥa* and with reference to the Qur’ān and *ḥadīth*.²⁶² Similarly, in the introduction to his interpretation of *Sūrat al-mumtaḥana*, Fadlallah addressed the relationship between Muslims and non-Muslims. He acknowledged that *Al-*

²⁶⁰ Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur’ān* vol. 1 (Beirut: Dār al-malāk, 1998), 82.

²⁶¹ *Ibid.*, 83.

²⁶² Felicitas Opwis, “Maṣlaḥa in Contemporary Islamic Legal Theory,” 193-94.

mumtaḥana forbids believers to take as guardians and companions God’s enemies and the enemies of Muslims. This is so because it would be “detrimental to the nature of the strong position that the believers should take in the case of confrontation between infidelity and faith.”²⁶³ “On the other hand,” he tells us:

It is detrimental to spiritual faith, both in the character of the believer and his relationship with God, that which forces him to befriend the friends of Allah and be hostile to His enemies. Faith does not represent a state of mind isolated from a situation, but rather represents the basis for determining circumstances vis-à-vis attitudes and relations. And that which is made of the issue in differentiating lines and positions is related to the larger practical consequences for... the interest of Islam [*maṣlaḥat al-Islām*]. For if the foundation of faith in God is manifested in human thought and spirit, it must be negatively reflected in the enemies of God, and positively in [those who disseminate His message].²⁶⁴

Fadlallah thus concludes that “the question is not a matter of separating believers [from non-believers]... It is a question of separating [believers] from infidels who intend, show, and engage in psychological and practical hostility to Islam and Muslims.”²⁶⁵ In other words, he accounted for time and place, i.e., politics, in order to determine how the law should be interpreted.

If “*maṣlaḥat al-Islām*” determines alliances and collaboration then one might also argue that exigencies of governance can override the confrontation between

²⁶³ Q.60:1: “Oh, you who have believed, do not take my enemies and your enemies as allies, extending to them affection while they have disbelieved in what came to you of the truth, having driven out the Prophet and yourselves [only] because you believe in Allah, your Lord. If you have come out for *jihād* in my cause and seeking means to my approval, [take them not as friends]. You confide to them affection, but I am most knowing of what you have concealed and what you have declared. And whoever does it among you has certainly strayed from the soundness of the way.” Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur’ān* vol. 22 (Beirut: Dār al-malāk, 1998), 141.

²⁶⁴ Ibid.

²⁶⁵ Ibid., 142.

infidelity and faith. Fadlallah's interpretation of Q.60:8²⁶⁶ argued for an exception with *maṣlaḥa* as a basis for collaborating with "hostile countries"—or enemies of Islam:

There may arise pressing circumstances in which Muslims may be forced to have certain relations with hostile countries, for the interest of Islam... And this matter may force the guardian (*walī*) to face the issue in an active way, with some reservations that are required for the public safety of Islam and Muslims.²⁶⁷

As Khomeini purchased weapons from Israel through the United States, Fadlallah also—years later—condones collusion with hostile countries. The intention of this type of methodology, according to al-Khishin, is not to establish time as finite, as night, day, morning, or evening, but to take into account that which accompanies the changing of time and place such as social, economic, and political networks. It is a "change in... epistemology... which is reflected in the penal system."²⁶⁸ In other words, time and place are crucial elements of independent legal reasoning (*ijtihād*).

Despite engaging in al-Ghazālī's brand of formal reasoning in his *Tafsīr*, Fadlallah was less constrained by older modes of extending the law beyond the *ḥadd*. So, for the sake of the legislative balance discussed above, Fadlallah relied on the Qur'ān less as an unchanging set of rules and more as a means for legal guidance. Take for example Fadlallah's opinion on equality between men and women. With excerpts from the Qur'ān, he counters what he labels a "weak Shiite hadith" that says,

²⁶⁶ Q.60:8: "Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being righteous toward them and acting justly toward them. Indeed, Allah loves those who act justly. Allah only forbids you from those who fight you because of religion and expel you from your homes and aid in your expulsion - [forbids] that you make allies of them. And whoever makes allies of them, then it is those who are the wrongdoers."

²⁶⁷ Fadlallah, *Tafsīr* vol. 22, 159.

²⁶⁸ al-Khishin, "Dawr al-zamān wa-l-makān."

“never will succeed such a nation that makes a woman their ruler.” Instead, he argues that women are equally capable not only to judge in religious and legal matters but also to rule. Fadlallah tells those who base their judgements on the above *ḥadīth* to be aware that the “Qur’an has presented to us a more mindful woman who is stronger in setting plans and more rational than men,” and this is the queen of Saba’ who was offered only military assistance after consulting with her advisors on what to do in response to Solomon’s letter. She said, in response to her offers of physical strength, “Kings, when they enter a country, despoil it, and make the noblest of its people its meanest thus do they behave. But I am going to send him a present, and (wait) to see with what (answer) return (my) ambassadors.”

Fadlallah’s interpretation is as follows: “Allah judges humans in accordance to their intellectual level,” so “why would Allah present to us this example of the woman who is more rational and wiser than men?” And if this weak *ḥadīth* were true, he reminds us—as al-Ṣadr might have done—that “it was talking about the nature of rule at that time which differs from the nature of rule at our times.”²⁶⁹

Due to his distaste for monarchy, Khomeini would never have referenced a king or queen in such a positive light. He would have instead relied on the women of the Prophet’s family, like Fāṭima or Zaynab, who provide a revolutionary allegory. While gender will be the topic of chapter three, it is worth noting here that the Qur’ān, for Fadlallah, takes precedence over the *ḥadīth* as a legal reference. This

²⁶⁹ Muhammad Husayn Fadlallah, “The Legitimacy of Women Assuming Political and Judicial Positions,” *Bayynat* (2 October 2014). URL: http://english.bayynat.org.lb/Women/Women_Legitimacy.htm#.WMXiaY5BreQ; Muhammad Husayn Fadlallah, “The Status of the Woman in the Quran,” *Bayynat* (1 January 2014). URL: http://english.bayynat.org.lb/Women/Women_WomanQuran.htm#.WMXibI5BreQ; Q.27:34-35.

subordination of the *ḥadīth* to the Qur’ān is congruent with what Reinhard Schulze argues is emblematic of modern Islam, that is, for authority to appeal to a wider political public less concerned with classical Islamic lexicon attributed to the *ḥadīth*.²⁷⁰

Further pitting the Qur’ān against the *ḥadīth*, Fadlallah asked:

If the Quran pictures women in this sense, how could then the Islamic thought be based on the aforementioned prophetic tradition?! Is it a thought that considers the woman, in her nature, incapable of ruling and using her mind to assume a certain position?²⁷¹

He draws our attention not only to the fallacy of using a weak *ḥadīth*, which, according to Fadlallah is the only one that discusses the issue of a woman’s inability to rule and judge, but also to the juridical error of arguing that a man’s testimony is worth twice as much as a woman’s. He concludes that in this case *ijtihād* is “not blocked in any direction, because the traditions narrated on this subject are weak and man could discuss some of their connotations and realize that the issue of judicial authority is based on knowledge and piety,” rather than on gender.²⁷²

At the same time, Fadlallah deployed the concept of *maṣlaḥa* as “benefit” or “common good” in order to determine if an action or ruling is permitted, neutral, or forbidden. Although Fadlallah believed that avoiding disadvantages or corruption (or *mafsada*) is preferable to attaining benefit (or *maṣlaḥa*), he understood that when faced with two or more choices, a jurist must often rule to avoid that which poses the greatest disadvantage or to accept that which brings the greatest benefit.²⁷³

²⁷⁰ Schulze, *A Modern History*, 291.

²⁷¹ Fadlallah, “The Legitimacy of Women Assuming Political and Judicial Positions,” *Baynat*.

²⁷² *Ibid*.

²⁷³ Alagha, “G. Banna’s and A. Fadlallah’s Views on Dancing,” 69.

Doing so, Fadlallah argued that women have rights over their bodies and sanctioned art that involves one's body if it is in the service of the common good. As al-Ṣadr advocated "freezing" (*tajmīd*) legal precedents in certain circumstances, Fadlallah allowed the circumvention of these precedents, such as the "restoration" of virginity and dancing. He sanctioned dancing as purposeful art, which does not arouse sexual temptation and requires positive political or social intent. In order to adhere to this definition of "purposeful art," women who dance must abide by Islamic norms and aim to benefit the "common good," regardless of their private morality.²⁷⁴ In other words, Fadlallah sanctions art that serves an instrumental aim rather than art for art's sake. He explains:

Some religious thinkers prohibit [dancing and singing] because they are considered a kind of play or fun; while others believe that the kind of singing, which doesn't arouse temptations and which at the same time encourages moral obligations, is lawful. For this reason I do not consider the profession of dancing and singing, which preserves moral obligations, to be prohibited. My teacher, Ayatullah Sayyed [al-Khū'ī], also authorized this.²⁷⁵

Fadlallah's *maṣlaḥa* encourages instrumental action, by which is meant action with measurable and controllable effect. This should be contrasted with his formulation of commanding right and forbidding wrong, which sometimes involves an element of negative action insofar as refraining from a greeting or abstaining from sexual intercourse cannot exist without its opposite, that is, the initial act of greeting or engaging in intercourse. There is in these cases no measurable political effect; they are individual protests rather than collective political actions, which no doubt are also part of commanding and forbidding. So, we might say that in order for *maṣlaḥa* to be

²⁷⁴ Ibid., 70.

²⁷⁵ Muhammad Husayn Fadlallah, "The Jurisprudence of Art," *Bayyinat* (N.d.). URL: <http://english.bayyinat.org/Jurisprudence/art.htm>.

measurable, there must be a political goal or effect. The political act inherent in *maṣlaḥa* need neither be grandiose nor encompass resistance. It might be as simple as dancing or cooperating temporarily with an enemy. At the same time, actions that constitute mere symbols or gestures, like refraining from a greeting, have no relationship to *maṣlaḥa* because they do not confront the political world in their aims.

Fadlallah built on the jurisprudential method that Khomeini had established years earlier. But, according to al-Khishin, Khomeini did not “invest in building the movement of his juridical derivations, with the exception of very few cases (such as his *fatwā* sanctioning chess because it is no longer a way to gamble but a way to train the mind).”²⁷⁶ Al-Khishin seems to be mistaken here, as there are numerous examples of Khomeini deploying similar justifications to the ones he used for his *fatwā* on chess. Among his better-known *fatāwā* are those sanctioning eating, buying, and selling caviar as a staple of the Iranian economy, as well as his *fatwā* sanctioning gender reassignment surgery with government funding.²⁷⁷ To be sure, these are a few examples, but it should be clear by this point in the chapter that Khomeini’s political theology was based on rulings like these, upon which Fadlallah built. Unlike Khomeini, however, Fadlallah was less concerned with how a state could fulfil its greatest good through jurisprudence and more concerned with how jurisprudence could be used to create a “balance” that would minimise the overall harm in everyday action and maximise material and ethical benefits.

²⁷⁶ al-Khishin, “Dawr al-zamān wa-l-makān.”

²⁷⁷ *Imām Khomeynī*, “Khurdan-i khāvyār va kunsirv va māhī-hā-yi kih az naw‘-i ḥalāl būdan-i (falas dār) ān-hā ma‘lūm nīst va dar bāzār-i musalmānān va ghayr-i musalmānān va ristūrān-hā ‘arza mī girdad va yā dar mihmānī-hā mī āvarand, ḥalāl ast yā ḥarām?,” (10 May 2013). URL: www.imam-khomeini.ir/fa/c12_15450/.

This section showed that Fadlallah’s approach to *maṣlaḥa* is significant and innovative in two ways. These two ways involve both method and context. Like his contemporaries, such as al-Ṣadr, Muḥammad Mahdī Shams al-Dīn, and Khomeini, Fadlallah attempted to incorporate current issues and concerns into his jurisprudence. He did so by considering “time” and “place” as methodological criteria that can explicitly determine how a ruling is made. While also significant criteria for Khomeini, the terminological emphasis on these elements marked a departure from pre-twentieth-century jurists who either used *maṣlaḥa* to rule on issues over which they had explicit jurisdiction, with well-researched textual evidence, or defined the concept according to strict textual rulings.

Because of his more clearly expressed, though not completely transparent, criteria for using *maṣlaḥa* to judge, Fadlallah was perhaps closer to Ash‘arī methods than was Khomeini. But this closeness is neither an affinity nor a genealogical legacy. This is simply a comparison. Fadlallah indeed defined *maṣlaḥa* as a law-finding tool, as did earlier Ash‘arī theoreticians. He also relied to an extent on textual evidence from the Qur’ān and Sunna in some cases, which Khomeini mostly avoided. However, instead of defining a hierarchy of priorities for *maṣlaḥa*’s use, Fadlallah’s first priority was the Muslim community’s general welfare and, at some later stages, that of humanity—an unprecedented juridical category in the concept’s tradition. For even if al-Ṣadr’s *khilāfat al-insān* might have provided some inspiration, his idea was still bound to the concept of caliph.

Where *maṣlaḥa* had been limited by his juridical forefathers and his contemporaries, such as al-Khū’ī, Fadlallah from the 1980s built on al-Ṣadr’s method

used to suspend the *ḥadd* to apply *maṣlaḥa* in the service of a wider community. It is arguably on the issue of text and tradition where Fadlallah differs from Khomeini and with which his use of *maṣlaḥa* is more comparable with historical approaches. His invocation of the Qur’ān and *ḥadīth*, as well as a more nuanced explanation of *ijtihād* should not be compared to pre/early-modern methods. As demonstrated in his *Tafsīr*, Fadlallah’s method was to uncover what Takim labels the “spirit” of the Qur’an²⁷⁸ instead of a reason that can be directly derived from its text. In other words, he departed from Khomeini’s method by relying more on textual sources, like many jurists throughout history, while sometimes leveraging the absence of sources for *maṣlaḥa*’s use.

Fadlallah was, in the end, less concerned with using *maṣlaḥa* to loosen and bind a de facto ruler, as were some early-modern and early-twentieth-century jurists. He also avoided a method that subordinated the contemporary needs and concerns of his society to clear textual evidence, as many jurists had done before him. In Lebanon’s political context in which a ruler was absent, Fadlallah’s method for *maṣlaḥa*’s use—however enigmatic—specifically benefitted Muslims beyond the law’s provisions because Islam would provide the most effective and fairest form of social, political, and economic justice. This, he believed, would ensure adherence to the *sharī’a* on an inter-confessional level. On the other hand, he thought it might also prevent further inter-communal violence between minority and majority groups in Lebanon, ideally resulting in the complete abolition of confessional politics.

Commanding and Forbidding and Maṣlaḥa as Twinned Concepts

²⁷⁸ Takim, “Maqāṣid al-Sharī’a in Contemporary Shi’i Jurisprudence,” 102.

The final section of this chapter discusses commanding and forbidding's intimacy with *maṣlaḥa*. The first part explains how both concepts are deployed for ethical and political harmony respectively, similar to what Fadlallah terms "legislative balance." On the surface, *maṣlaḥa* is a counterbalance to *mafsada*, while *ma'rūf* is a counterbalance to *munkar*. Despite *ma'rūf* and *munkar*'s roles in explaining legal judgements, they do not function as legal tools like *maṣlaḥa*. They are ethical terms to express and assess the morality of an action. *Maṣlaḥa*, on the other hand, is a legal tool used to justify a judgement based on its potential benefits against its potential harm. The second part of this section explains how commanding and forbidding and *maṣlaḥa* confront one another in certain political instances. When, for example, one commands or forbids, the necessary and potential benefits (or *maṣlaḥa*) might override previous boundaries that once constrained the relevant command or forbiddance. In other words, the two concepts converge to accomplish a political goal or effect.

Commanding and Forbidding and *Maṣlaḥa* as Balance

In his 2002 edition of *Fiqh al-sharī'a: al-'ibādāt* vol. 1, Fadlallah discusses *ma'rūf* and *munkar* as potential distinctions for actions that are legally permitted (*mubāḥ*). These legally permitted actions, however, only become *ma'rūf* or *munkar* in certain circumstances when they earn a new legal label that is no longer *mubāḥ*. "The permissible (*mubāḥ*)," Fadlallah tells us, "does not become *ma'rūf* or *munkar* unless *maṣlaḥa* or *mafsada* dominate one side or another [of action] and it earns the exceptional titles mandating *ḥarām* (legally forbidden), *wujūb* (legally obligated), *istiḥbāb* (encouraged), or *kirāha* (discouraged)."²⁷⁹ *Ma'rūf* and *munkar* are thus

²⁷⁹ Fadlallah, *Fiqh al-sharī'a: al-'ibādāt*, 622.

limited by *maṣlaḥa* and *mafsada*—by benefit and harm. These two pairs thus have a cause and effect relationship. In other words, an action that produces *maṣlaḥa*, or benefit, can be considered *ma'rūf*, while an action that produces *mafsada*, or harm, can be considered *munkar*. But Fadlallah does not define in greater depth the meanings of these two pairs.

On the other hand, Shaykh al-Būṭī, discussed earlier, provides a method for weighing *maṣlaḥa* against *mafsada*, not as they relate to *ma'rūf* or *munkar* but as they relate to general rulings. According to al-Būṭī, a jurist must weigh the benefit against harm (*maṣlaḥa* against *mafsada*) based on the scale of the necessities of existence in descending importance: religion, life, intellect, progeny, and property. Each has precedence over the next. While this is a clearer method than any we have encountered so far, it is strikingly at odds with Khomeini's method, which, while more ambiguous, nevertheless places the Islamic Republic at the highest level of existence. This is because Khomeini's method allows for exceptional rulings, often related to governance, while al-Būṭī's method does not. *Maṣlaḥa*'s exceptional use and its relationship to commanding and forbidding will be discussed in the second part of this section.

Al-Būṭī also established a practical method for assessing *maṣlaḥa* in everyday life. For example, as Opwis points out, al-Būṭī says that selling grapes to a vintner will result in wine, and thus result in certain *mafsada*, while selling grapes to an ignorant person does not necessarily result in wine and so *maṣlaḥa* prevails.²⁸⁰ In these instances involving grape-selling, one might deduce that Fadlallah would define

²⁸⁰ Opwis, "Maṣlaḥa in Contemporary Islamic Legal Theory," 216-17.

the first as *munkar* and the second as *ma'rūf*. As a result, the *munkar* action should be forbidden because it produces *mafsada* while the *ma'rūf* action is virtuous because it produces *maṣlaḥa* through commerce, and harm is only a possible—not certain—externality.

While there appears to be a method in the above explanation, the definitions remain vague. Perhaps approaching this problem from another perspective will help us to think differently about the definitions of *maṣlaḥa* and *mafsada*, on the one hand, and *ma'rūf* and *munkar* on the other. If we take another form of the word *maṣlaḥa*, *ṣalāḥ*, meaning “goodness,” its connotations become clearer. One study on reformism (*iṣlāḥgirāy'i*) in Khomeini's thought shows that *ṣalāḥ* should be understood in opposition to *fasād*, which, usually translated as “corruption,” also means that which is “outside the state of moderation.”²⁸¹ With this definition we have not only a dichotomy between benefit and harm or good versus bad, but also the social limitations of these terms. Balance once again comes to the forefront of the two pairs of terms. In other words, if someone exits the state of moderation—or exhibits *mafsada*—his/her actions are defined as *munkar* and should be forbidden in order to return to balance, or to that which is within the state of moderation.

As Salvatore suggests, *maṣlaḥa* not only connotes the “common good,” in part because of its semantic and ideational links to reform (*iṣlāḥ*),²⁸² but also relates to a reform project not unlike the one that might be pursued with commanding and

²⁸¹ Fāṭima Gūdarzī, *Andīsha-hā-yi iṣlāḥgirāyāna-yi Imām Khumaynī dar muqāyisa bā Sayyid Jamāl al-Dīn Asadābādī* (Qom: Chāp va nashr-i 'Arūj, 2004), 38.

²⁸² Armando Salvatore, “The Reform Project in the Emerging Public Spheres,” in *Islam and Modernity: Key Issues and Debates*, eds., Muhammad Khalid Masud, Armando Salvatore, and Martin van Bruinessen (Edinburgh: Edinburgh University Press, 2009), 185-205, at 188.

forbidding. This is precisely why Khomeini asserts in his *Tahrīr* that commanding and forbidding is “meant for the elimination of corruption (*al-fasād*) and the exercise of an obligatory duty.”²⁸³ Interesting about Khomeini’s statement is that in addition to being a gesture (“the exercise of an obligatory duty”), like prayer or fasting, it also links to an action with immediate consequences—the elimination of corruption. This is where the potential political quality of commanding and forbidding as more than just a social gesture, and *maṣlaḥa* as a legal tool, converge; they are both endeavours to change one’s immediate political landscape. To be sure, commanding and forbidding on one hand, and *maṣlaḥa* on the other, are most intimately connected through this particular convergence.

Commanding and Forbidding and *Maṣlaḥa* as Instrumental Acts

What do we mean when we discuss commanding and forbidding and *maṣlaḥa*’s use as more than gestures, but as instrumental actions? And what kind of instrumentality does commanding and forbidding entail versus that of *maṣlaḥa*? While the answers to these questions can mostly be found in the previous sections of this chapter, the language of instrumentality helps to define more specifically the convergence of our two concepts along the boundaries of the social and political realms in Fadlallah and Khomeini’s thought.

Fadlallah’s explanation of commanding and forbidding by the heart was discussed earlier.²⁸⁴ For Fadlallah, the boycotts or protests that are performed with commanding and forbidding by the heart are limited in intent and action. Refusing an answer to “*al-salāmu ‘alaykum*,” for example, confronts a wrong with a gesture. But

²⁸³ Khumaynī, *Tahrīr* vol. 1, 465.

²⁸⁴ Faḍlallah, *Fiqh al-sharī‘a: al-‘ibādāt*, 628-29.

one only has the choice to refuse the greeting or accept. Refusing cannot change politics or produce an effect beyond the performer's immediate circumstances. Furthermore, the gesture is in other words by essence reactionary because it cannot exist without a causal action. To be sure, commanding and forbidding with the tongue or hand—verbally or by force—also exist because of a cause, but collective and creative possibilities exist for these two classifications.

This does not mean that all physical responses are political. A response with a gesture might as well be physical. For example, a wife might abstain from intimacy with her husband to protest his transgressions:

If the evil that is practiced and the good that is abandoned is so important to the extent that it leaves a large negative impact on a person or society, and if the refrain of her heart is of the influential ways in his commitment to the good and the leaving of bad.²⁸⁵

But, as with refusing to answer a greeting, the above action functions only as a response. While it might cause one's partner to comply or reform their behaviour, it cannot effect a greater good or any long-term condition. It is also not creative but instead constituted wholly as a reaction within narrow limits of cause and effect.

Arguably, among the most physical actions is self-sacrificial violence in the form of suicide bombing. Although Fadlallah never provided a definitive legal opinion (or *fatwā*) on this issue, he allowed it in some cases. He argued: "Israelis are using weapons, such as the F-16 aircraft, which are meant only for major wars. There is no other way for the Palestinians to push back those mountains, apart from martyrdom operations."²⁸⁶ Surely Fadlallah was under no illusion regarding suicide

²⁸⁵ Ibid.

²⁸⁶ Graham Turner, "We could provide a million suicide bombers in 24 hours," *The Telegraph* (4 September 2002). URL:

bombing's success against F-16 aircraft but he understands that there is no alternative. This, he contends, is different from the attacks carried out on 9/11 because "[the Palestinians] are in a state of war with Israel. They are not aiming to kill civilians but, in war, civilians do get killed."²⁸⁷

Interesting about Fadlallah's justification is that he cited neither a religious precedent nor an Islamic one. Instead he cited the precedent of Allied operations during the Second World War in which the civilian populations of Hiroshima and Nagasaki were bombed. He asked his interviewer: "During the Second World War... [w]ere the bombs which fell on Hiroshima and Nagasaki dropped on civilians or not?" He continues: "In your war against the Nazis, were you willing to use any means? Of course you were."²⁸⁸ With his World War Two analogy, Fadlallah established as his justification an existential threat to the Palestinians within a finite time and territory, versus that of al-Qā'ida's global *jihād*. He also extracted his argument from the limits of Islamic jurisprudence and placed it in a global arena.

To be sure, he conceded reluctantly, "should the nature of the confrontation with the enemy necessitate that the [*mujāhidīn*] engage in operations where they might get martyred, it is wholly justifiable. Indeed, it might become obligatory, if victory depended, in a greater measure, on such operations." Like Khomeini, this is premised on a rereading of commanding and forbidding's *ahammiyya* condition, about which Fadlallah added: "jihad is predicated on sacrificing oneself. Even if, for

<http://www.telegraph.co.uk/news/worldnews/middleeast/lebanon/1400406/We-could-provide-a-million-suicide-bombers-in-24-hours.html>.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

the sake of the argument, it means risking danger, making the embarkation on [a *ḥarām* act] where there is no more important Islamic interest that can be served...”²⁸⁹

Regarding *fatāwā*, Fadlallah maintained: “I am one of those who stood against all this commotion for *fatāwā*. Despite the positive points which come out of [suicide bombing], I believe that there are many negative points.” And while claiming to “view [suicide bombing] as religiously lawful warfare against the world’s imperialist and domineering powers,”²⁹⁰ his *fatāwā* on *jihād* avoid any reference to Muslim historical precedents or allegories, which might have served to ground *jihād* in a greater ideological struggle. Thus, like Truman’s atomic bombs as a calculated action for the Allies’ benefit, suicide bombing is a calculated action for Islam’s (or the Palestinians’) benefit over certain harm. *Jihād*, as Talal Asad contends, “is the Islamic version of ‘just war’.”²⁹¹ But a comparison to “just war,” while an instructive exercise in conceptual translation, fails to reveal fundamental political differences between the two methods of combat. And, moral evaluations aside, Truman’s atomic bombs arguably produced victory for the Allies while suicide bombing has failed to result in national liberation for Palestinians.

Suicide bombing, as Fadlallah describes, appears instead as a hypothetical and ethical action that attempts unsuccessfully to become a truly political act. It is the last resort of the oppressed who have no other means but to sacrifice themselves in the

²⁸⁹ Muhammad Husayn Fadlallah, “Rules of Self-Defense,” *Bayyinat*. URL: <http://english.bayyinat.org.lb/Fatawa/s10p2.htm>.

²⁹⁰ Martin Kramer, “The Oracle of Hizbullah: Sayyid Muhammad Husayn Fadlallah,” in *Spokesmen for the Despised: Fundamentalist Leaders in the Middle East*, ed. R. Scott Appleby (Chicago: University of Chicago Press, 1997), 83-181, esp., 96.

²⁹¹ Talal Asad, “Thinking About Terrorism and Just War,” *Cambridge Review of International Affairs* 23, no. 1 (2010): 3-24, esp. 14.

face of defeat. Suicide bombing is also on the margins of, but bound to, commanding and forbidding. Although commanding and forbidding does not traditionally sanction it, the rhetoric of commanding and forbidding justifies it. At the same time, because Fadlallah's suicide bomber confronts imminent destruction, there is no expectation that this sacrifice will change the political landscape. For this reason, the act cannot be defined as instrumental. To be sure, while Fadlallah might have hoped that it produces a wider positive effect as with any command or forbiddance, he appears to concede that this is unlikely. He does not explicitly express this sentiment but his reluctance to declare suicide bombing as a categorically acceptable practice reveals this concession. We should remember that (at least) the possibility of success must exist for a command or forbiddance to be obligatory.

While Khomeini in 1978 had not addressed suicide bombing but only general self-sacrifice, Fadlallah—like Khomeini—frames self-sacrifice as a *potential* duty with necessary risk. Unlike Khomeini, however, self-sacrifice for Fadlallah is not a duty justified by historical precedent, even if there is legal (*shar'ī*) precedent. Whereas Khomeini compared the shah to Yazīd as precedent for revolution, Fadlallah neither references allegory in Islamic history nor predicates self-sacrifice on establishing a new community, which would have been closer to the goal of Palestinian national liberation. Fadlallah's suicide bomber exists only in his/her immediate context as opposed to al-Qā'ida's global *jihād*, which exists anywhere and everywhere. This is significant because the departure from a global *jihād* is why Fadlallah can simultaneously condemn the 9/11 World Trade Center attacks and sanction Palestinian suicide bombings. The paradox here is that whereas suicide bombing, for Fadlallah, intends on Palestinian liberation, and the global *jihād* has no

clear political intention, the Palestinian martyr is still strikingly different from Khomeini's 1978 Iranian martyr.

It seems as though Fadlallah never accepted the possibility for individual action like suicide bombing to be instrumental. For political action to result in measurable effects, according to Fadlallah, there must be sufficient (*kifā'ī*) participation (i.e., it must be collective). We might remind ourselves that he referenced internecine violence and communal reconciliation as a catalyst for political action. And he concluded that this political action must be communal whether violent or non-violent. It is precisely this brand of communal action that returns balance to the *sharī'a* and enters the world of politics, a world in which *maṣlaḥa* most clearly operates. Although Fadlallah addresses an "Islamic interest" above, he does not make any clear appeal to collective suicide bombing—it remains confined to individual or intermittent operations—because he would not have been able to justify a collective obligation to self-sacrifice. As opposed to the *intifāḍa*, which entailed a collective confrontation with the Israeli-Palestinian political world and the intention to establish an independent, liberated state, suicide bombing on an individual level is only an ethical action which refuses a confrontation with collective political interests.

We might therefore argue: when commanding and forbidding confronts politics, *maṣlaḥa* emerges. Khomeini's iteration of self-sacrifice sanctioned by commanding and forbidding is completely instrumental and not negative; overthrowing a state is the most dramatic political change one can effect. And, unlike Fadlallah's suicide bomber, Khomeini's martyr is among a community of martyrs. Of course, suicide bombing in its current form had not existed prior to the late 1970s

when the latter encouraged young Iranian students in France to sacrifice themselves (not with suicide bombing) against the shah by overriding *ahammiyya*. But Khomeini's transformation of *ahammiyya* is exemplary instrumental politics at work. Cook argues that the circumvention of the tradition of *ahammiyya* does "not in fact relate to forbidding wrong in any obvious way" and "this new doctrine is inserted without any attempt to integrate it with the old."²⁹² Yet, the language both of commanding and forbidding and of *ahammiyya* is used to explain this circumvention.

Take, for example, Khomeini's previously discussed statement in which he says, one may cause damage to one's life or others "when the case is among the important ones, though cases differ [in terms of importance or *ahammiyya*]."²⁹³ While Khomeini's new doctrine is still within commanding and forbidding's lexicon, it is justified by something else. Khomeini's *maṣlaḥa* allows for the circumvention of the *ahammiyya* tradition, much in the same way *maṣlaḥa* would later be used vis-à-vis the parliament and the Expediency Council to circumvent the *sharī'a*'s ordinances. He does not explicitly invoke the term "*maṣlaḥa*" but the method in both cases of circumvention is almost identical. He transformed tradition into instrumental political action through considerations of the common good. As such, commanding and forbidding endows the performer with limited social autonomy and thus a degree of authority because the performer independently assesses the method and legitimacy of commanding right or forbidding wrong, as discussed in the first section of this chapter.

²⁹² Cook, *Commanding Right and Forbidding Wrong*, 534.

²⁹³ Khumaynī, *Taḥrīr* vol. 1, 467.

But *maṣlaḥa* remains in the domain of the legal and political because it can be used only by a jurist, such as Khomeini. Khomeini's power lies in the authority to change commanding and forbidding from what was traditionally social into something political. We might therefore conclude that while a cleric might simply limit social authority—in, for example, commanding and forbidding—by writing in his *risāla* rules and regulations for his followers, he monopolises political authority with a juridical concept like *maṣlaḥa*.

One way to think about how *maṣlaḥa* converges with commanding and forbidding is to consider how *maṣlaḥa* elevates a social and ethical precept to the political realm. Contra Fadlallah, Khomeini's call for self-sacrifice is both communal and, rather than a final resort, it is the first act in establishing a new community, a new nation-state for which forms of self-sacrifice are essential. At the same time, this brand of self-sacrifice is explained only with commanding right and forbidding wrong, despite involving an exception to the anti-sacrificial norm of *ahammiyya*. Khomeini's juridical exception needs neither precedent nor provocation in order to explain it, as Cook might expect, and so the exception is creative. This exception is creative, not because it is an act based on nothingness or frivolity but because it breaks with tradition, needing no clear initial action as reason or cause. Yet, only with *maṣlaḥa*'s deployment is this creativity possible.

Creative action perhaps explains why Fadlallah was so concerned with using *maṣlaḥa* to sanction forms of art. Weighing *maṣlaḥa* against *mafsada* comes into play once again when Fadlallah decides on what kind of art is permitted. If the artist's role is “advantageous to the Islamic situation” and it “affects his morals and his religious

values,” Fadlallah says, then “it is permitted for a pious man to work in a domain of art which is known for its wantonness.”²⁹⁴

But in what way is Fadlallah’s judgement on “creativity” political if it is strikingly different from Khomeini’s use of *maṣlaḥa*? In this case, we might consider that although Khomeini’s acts of creativity included establishing a new state and new ways of dealing with sovereignty, Fadlallah’s creativity drew political/instrumental action toward the social-communal realm. Instead of concerning himself directly with mechanisms of state, as the Expediency Council, or establishing a new state, Fadlallah endeavoured to endow everyday acts of resistance with political power. In other words, he liberated social action from the minutiae of Islamic tradition and law when he thought it expedient.

Conclusion

In conclusion, commanding and forbidding and *maṣlaḥa* are a defence of Islam and Muslims. On the surface, commanding and forbidding is concerned with one’s ethical-social conduct and *maṣlaḥa* is concerned with political-legal decision-making. Commanding and forbidding, on the one hand, is expressed primarily through a large corpus of traditional jurisprudence. It is meant to strengthen the Muslim community through an apparently strict set of regulations, but these regulations can, to an extent, be interpreted and reinterpreted by jurists and followers alike, albeit with different limitations. Mostly, the duty is a way by which a community can govern everyday life. But social governance is insufficient to

²⁹⁴ Fadlallah, “The Jurisprudence of Art.”

completely relieve political ills or injustices. In these cases, *maṣlaḥa* provides a way to circumvent law and to defend a community in cases of necessity.

For Khomeini, *maṣlaḥa* circumvents law to defend the political—to defend the state itself. Doing so, he transformed traditional Muslim ethics whereby the social-ethical and the political merge to establish the welfare of the Islamic Republic as a supremely ethical consideration. He elevated commanding right and forbidding wrong's significance to the level of state politics with consequences seen today.

For Fadlallah, however, *maṣlaḥa* was centred around a kind of political ethics of everyday life in which Muslims could maintain integrity and power within a diverse community; considerations of an Islamic state were largely hypothetical. For Khomeini and Fadlallah, communal political action or individual political action necessitated a form of ethics to explain a political action. Commanding and forbidding and *maṣlaḥa* provided these. Though unlike commanding and forbidding, authority over *maṣlaḥa* seems never to be communal for Fadlallah and Khomeini but always individual and juristic whether in group political action or individual political action.

Chapter Two: Messianism and The Public-Private Distinction

This chapter shows that esoteric politics was crucial in Fadlallah and Khomeini's formulations of *maṣlaḥa* and *ḥisba*, particularly as these two concepts relate to law's theoretisation for the public and private spheres. This is significant because a formulation of these spheres is necessary for any state in which law and society function; outlining the public and private is also important for theorising political-legal authority over state and citizen. As such, looking at how a thinker constructs these distinctions is indispensable for our understanding of his/her ideas on sovereignty.

Although both ayatullahs conceived of esoteric politics in different ways, the Messiah—as a figure shrouded in mystery—was arguably the basis for their esotericism. I therefore argue in this chapter that Fadlallah and Khomeini's simultaneous espousal of esoteric and messianic elements of religion allowed them to establish a brand of politics which helped them to maintain the internal cohesion of their respective communities. The Messiah was central to their ideas on how ethics and politics influence law. He is central because his arrival and implementation of justice and perfect government is arguably the most profound of religion's unknowns; when the Messiah will arrive and what exact form his government might take is impossible to ascertain, though these are interpretable to an extent. These principles have implications, as this chapter shows, for how theorists conceive of public and private space.

To be sure, the Messiah's centrality to law's theorisation in the history of Abrahamic religions has been corroborated. Giorgio Agamben, in his essay "The Messiah and the Sovereign," argued that "messianism represents the point of greatest proximity between religion and philosophy because religion confronts law through the Messiah, on the one hand, and philosophy is involved with confronting law on the other." Shi'ism, according to Agamben, along with Judaism and Christianity, has "always tried in every possible way to control and reduce the essential messianic properties of religion and philosophy, without ever fully succeeding."²⁹⁵

However, Khomeini and Fadlallah seized rather than reduced messianic properties of religion—properties that involve both hidden (esoteric) and apparent (exoteric) elements. They seized on these properties to resolve the tension between worldly and spiritual aspects of politics. Embracing those esoteric qualities of messianism through principles essential to *hisba* and *maṣlaḥa* allowed these two to establish a brand of politics that fosters internal cohesion and community.

The implication follows: if messianism reflects some of God's deepest mysteries due to an ambiguous finality, that is, when God's true law is to be implemented, then perhaps messianism expressed in a public expression of law (as, for example, in the Constitution of the Islamic Republic) is possible only with the existence of a hidden life. I will demonstrate this argument in part through Fadlallah and Khomeini's poetry—a medium through which the mysteries of divine authority and truth are traditionally pursued. But in order to lay bounds to this inner life in which one pursues God's mysteries, a public sphere is also necessary.

²⁹⁵ Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, edited and translated by Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), 163.

For Fadlallah and Khomeini, a community's public law and social character are contoured by ethics and politics, which, as chapter one showed, were expressed through *hisba* and *maṣlaḥa*. Khomeini and Fadlallah's authority over *maṣlaḥa*, as I will argue, depended on protecting their inner political life with limited transparency so as to mitigate opposition and justify its use. Commanding and forbidding, on the other hand, determines to an extent the ethical boundaries of this inner life, an inner life distinct from a purely political sphere.

This chapter therefore continues from the first chapter's argument: that Fadlallah and Khomeini conceived of commanding and forbidding and *maṣlaḥa* as fundamental and intimate components of law. Building on the first chapter's argument, however, this chapter demonstrates that law depends for Fadlallah and Khomeini on a hidden authority in Islam—an inner life—represented by the Messiah's mysterious qualities. Fadlallah and Khomeini endeavoured in different ways to control religion and law not with a reduction of messianic properties, as Agamben had conceived, but through messianic properties, which are reflected in commanding and forbidding and *maṣlaḥa*'s ethical and political dimensions.

The contrast between Khomeini's inner life, in poetry, and his political life reflects—and in fact undergirds—his Islamisation of public space through which private property and an inner life were protected. This Islamisation, which depended on an anticipation of the Messiah, enabled him to shape aspects of public life and institutions in the Islamic Republic. On the other hand, Fadlallah's less overtly mystical poetry reflects his proximity to the social world in which he operated. He

officially served in neither a political party nor state office yet he advocated change through ethical duties and obligations, with divine law as a set of values only to be implemented officially in the afterlife. For Fadlallah, divine law's implementation in the afterlife allows one to exchange or "cash in" on spiritual "capital" accumulated in one's earthly life. This has ethical implications for a community's conduct and the ways in which individuals view their own political interests. But why were Khomeini and Fadlallah so concerned with new conceptions of private and public life in relation to property or capital? And how are these new conceptions related to *maṣlahā* and commanding and forbidding?

Poetry and Politics

Perhaps you flirt with exemplary values and disbelieve in religions
While you live for disobedience, in every way, it does not meet with faith
You may love the philosophy of chaos and the spirit of destruction in
humanity
And vanish in the absences of lost thought the sensation of tired
drunkenness²⁹⁶

In Fadlallah's above *rubā'ī* (quatrain) we encounter a confrontation between public and private life. The subject of the poem is torn between two worlds: One world in which public action determines one's faith and another world in which belief and thought are preferred. Like the classical mystical *rubā'iyāt* of Rūmī, Ḥāfiz, and Sa'dī, with all their differences, Fadlallah's poem demonstrates a distinction between public life and private life, on the one hand, and between faith and disbelief on the other. For the classical poets engaged in mystical themes of wine and earthly love to critique the orthodox clergy's ritual piety but nevertheless sought God's love through their poetry, i.e., through personal initiatives or inner life. And although Fadlallah's

²⁹⁶ Muḥammad Ḥusayn Faḍlallah, *Yā zalāl al-Islām* (Beirut: Dār al-malāk, 2000), 39.

poetry shuns the faithless frivolity of lost thought and certain philosophical endeavours, he nevertheless expressed through private action—and poetry—a hidden aspect of faith that warrants exploration. As we will see, this public-private distinction is not necessarily dictated by a desire for individual liberty or for freedom from state regulation but instead by freedom from revelation and divine law.

Whether Fadlallah remained true to the poetic form used by his predecessors is not within the scope of this chapter but it merits a note. It is arguable that by shunning the “absences of lost thought,” or the “sensation of tired drunkenness,” he departed from the esotericism embraced by his mystical forefathers; for they encouraged intoxication, even if only metaphorically, in order to know God’s love and to love God in turn. Instead, Fadlallah employed a different method both from the classical poets and from Khomeini. I will later address the political significance of Fadlallah and Khomeini’s poetic differences, as well as how these differences reflect their understandings of the public-private distinction, but first a brief background of their poetic styles is necessary.

Fadlallah began writing poetry at the age of ten and performed his first public reading at twelve.²⁹⁷ Surprising about Fadlallah is that, like Khomeini, he wrote *rubā’iyāt*. This is unusual because unlike scholars in Qom, the Najafi scholars with whom Fadlallah studied mostly discouraged poetry in favour of a strictly legal education, which often excluded mysticism (*irfān*). Nevertheless, his uncle encouraged him to continue his writing. According to Fadlallah, his uncle Muḥammad Sa‘īd Faḍlallah thought of poetry as a way to perfect one’s Arabic and

²⁹⁷ Aziz, “Fadlallah and the Remaking of the Marja‘iya,” 205.

thus one's ability to interpret religious sources. The ayatullah explains his relationship to poetry as such: "the revelation of life inspired me, and from your world, literature fills my soul."²⁹⁸ We also see this separation of worlds in the following poem:

We are here to confide in you... We are not subject to the grave ... to the
gravel ... to its stones
All our words are pure for God, for his signs, for his pure glory
For you, in the name of the religion that embraces oneness (of God) in life's
splendour its slogan for you... for God... you, you messenger of God... we
live to understand His mysteries²⁹⁹

Fadlallah's above two poems demonstrate how he attempted to know and seek God through a hidden, esoteric endeavour such as poetry, as did his classical mystical predecessors. But Fadlallah appears to forgo the classical mystical tropes of intoxication and earthly love to critique the clergy and express a deeper love for God. There are two possible interpretations here. The first is that he prescribed a public expression of sincere piety as a remedy for what is unknown and hidden in the world. In this case, those who embrace philosophy are trapped in the lawlessness of the unknown. An alternative interpretation is that occupying oneself with drunken thought and philosophy—however metaphorical—is possible only if one is first committed to faith as a basis for truth. But if the latter interpretation holds water, then surely even with faith, chaos and lost thought become another kind of "unknown" and "absence" replaced in some ways by God's mysteries. The latter reading of Fadlallah's poetry suggests that he believed mystery essential to personal and public life, a mystery that the Najafi clergy often avoided. One therefore lives, according to

²⁹⁸ Surūr, *Al-'allāma Faḍlallah*, 34. Jocelyn Sharlet argues that praise poetry for all but God—excluding even the Prophet—was historically rejected by Muslim scholars and authorities from the Prophet to the Umayyad caliph, 'Umar, because according to the Prophet, exaggeration causes "confusion for the audience." Jocelyn Sharlet, *Patronage and Poetry in the Islamic World: Social Mobility and Status in the Medieval Middle East and Central Asia* (London: I.B. Taurus, 2011), 9.

²⁹⁹ Faḍlallah, *Yā zalāl*, 181.

Fadlallah, on Earth—in the material world—for the purpose of understanding “His mysteries” without fear of or aversion to the afterlife. One might accept and strive to understand these mysteries without rheotic that refers to intoxication in its mystical forms.

Contra Fadlallah, Khomeini embraced the mystical tropes of his predecessors. According to William Hanaway, “...one committed to the formal (as well as the inner) aspects of Islam, as was the Ayatullah, would find classical-style mystical poetry a convenient vehicle through which to express his mystical feelings, which by nature are often antinomian.”³⁰⁰ Take, for example, the following poem:

That day when I shall make my way to tavern,
I shall entrust all the friends to the Sufi robe and to the seat of the Pir.
I shall tear up the scrolls of the sage, the philosopher and the gnostic
While crying and beating my feet³⁰¹

With a markedly different style from Fadlallah, Khomeini also used poetry to express the distinction between inner and outer life. He rejects the “sage, the philosopher and the gnostic” because these figures cannot grasp the truth of the human spirit by which one might discover God’s mysteries.³⁰² But there is another common theme between Fadlallah and Khomeini’s poetry, that is, an aversion to or even destruction of philosophy. While Khomeini’s subject tears up the philosopher’s

³⁰⁰ Ruhollah Khomeini, “Five mystical ghazals by the Ayatollah Khomeini,” *Iranian Studies* 30, no. 3-4 (1997): 273-76.

³⁰¹ Imam Khomeini, *The Wine of Love, Mystical Poetry of Imam Khomeini*, trans. Ghulam –Rida A’wani and Muhammad Legenhausen (Tehran: The Institute for the Compilation and Publication of the Works of Imam Khomeini, N.d.), 71. For Persian text, see Rūḥallah Khumaynī, *Dīvān-i Imām Khumaynī* (Tehran: Mu’assasa-yi tanzīm va nashr-i āṣār-i Imām Khumaynī, 1995), 223.

³⁰² Ghulām-Ḥusayn Dīnānī, “Imām Khumaynī va dunyā-yi shi‘r,” *Imām Khumaynī* (22 November 2016). URL: <http://www.imam-khomeini.ir/fa/n21245/%D8%A7%D9%85%D8%A7%D9%85%D8%AE%D9%85%DB%8C%D9%86%DB%8C%D8%B3%D9%88%D8%AF%D9%86%DB%8C%D8%A7%DB%8C%D8%B4%D8%B9%D8%B1>.

scrolls, Fadlallah's wayward subject loves philosophy. For both, affirming God's objective truth is insufficient; one must also abandon a rational philosophy that rejects the divine or attempts a rational explanation for that which cannot be explained.³⁰³ The world's mysteries are in fact essential, not only for Fadlallah and Khomeini, but also for the global debate on politics' relationship to law in its divine and public-material forms.

Esotericism or Philosophy

Agamben, of course, was not the first European historian or philosopher to address the conflict of revelation, to which messianism is essential, with law and politics in Islam or the West. The historian of philosophy, Leo Strauss (d. 1973), one of Agamben's contemporaries and influences, contended that the conflict between philosophy and poetry reflects the conflict between philosophic life and the city. Poetry, unlike philosophy, is a way by which the masses might consume a noble lie for politics' sake or through which mystical accounts could be disseminated to preserve the inner coherence of a city.³⁰⁴ This conflict, according to Strauss, is more than a conflict between moral-political life, reflected in poetry, and philosophic life. It also represents the conflict between conformity with divine law in a changing world and philosophy's challenge to rationalise the mysteries inherent in revelation, for which esotericism is necessary.³⁰⁵ Esoteric politics, not rationality, is thus a way by which freedom from revelation's divine law on the one hand, and from pure reason, on the other, might be achieved. In fact, Strauss understood that modern philosophy's conflict with law and revelation can be traced as far back as medieval Muslim

³⁰³ Khumaynī, *Kashf*, 31-4.

³⁰⁴ Daniel Tanguay, *Leo Strauss: An Intellectual Biography*, tr., Christopher Nadon (New Haven: Yale University Press, 2003), 189.

³⁰⁵ *Ibid.*, 212.

scholars' reception of Ancient Greek philosophy—specifically Plato, who interpreted archaic Greek laws according to a divine exegetical method.³⁰⁶ Plato, in other words, treated codified earthly law as one that involves essential hidden components. Unlike Agamben, however, Strauss did not address Shi'i messianism.

Fadlallah and Khomeini's aversion to philosophy resonates unexpectedly with another of Agamben and Strauss's contemporaries who theorised a separation of philosophy from poetry and politics. Hannah Arendt (d. 1975), in her essay "Truth and Politics," posited a distinction between factual truth, determined by indisputable and recorded fact, such as the German Army's invasion of Belgium in 1914, versus philosophical truth. While philosophical truth is meant for persuasion and debate, or political "action," factual truth is meant for neither and is thus only political when opposed to a backdrop of lies.³⁰⁷ A lie, however, might consist of deliberately altering a factual truth or more subtly presenting a set of facts as if they represent a singular reality. Indeed, the presentation of tightly knit facts as reality was the basis for Arendt's critique of a poet who attempts to establish philosophical truth and interpretation as authority.³⁰⁸ But how, then, do poetry and politics relate to a rejection of philosophy?

According to Patchen Markell, "the problem, Arendt concludes, is that poets 'need a measure of remoteness, and yet would not be worth their salt if they were not forever tempted to exchange this remoteness for being just like everybody else'." It is this safe distance from public participation along with a deep concern for the political

³⁰⁶ Ibid., 67.

³⁰⁷ Hannah Arendt, *The Portable Hannah Arendt*, ed. Peter Baehr (New York: Penguin Books, 2000), 560-3.

³⁰⁸ Patchen Markell, "Politics and the Case of Poetry: Arendt on Brecht," *Modern Intellectual History* (2016): 1-31, at 26-8.

that, according to Arendt, allows for a valid cohesion of poetry and politics. But this safe distance, Arendt adds in “The Crisis of Culture,” does not mean that “art for art’s sake” is an appropriate goal.³⁰⁹ The task of the poet is instead “to be ‘a voice . . . not of himself, to be sure, but of the world and of everything that [is] real’.”³¹⁰

One of the best-known Muslim scholars who engaged in the above debate was the nineteenth-century reformist Jamāl al-Dīn al-Afghānī (d. 1897). Al-Afghānī critiqued early Greek “materialists” not simply for their materialism but rather, like Fadlallah and Khomeini, for a material philosophy that rejected God. These materialists in general and the Epicureans in particular, al-Afghānī argued, “first denied divinity, [a denial] which is the basis of all corruption and the source of all evils, and ruin...”³¹¹ This denial of divinity is more than just a denial of monotheism but more importantly it is a denial of the esoteric. It is a refusal to acknowledge or incorporate any brand of spirituality or inner life into politics.³¹² Al-Afghānī qualifies, “external observances are only for those people who have not arrived at the truth.”³¹³ In other words, the external is an imperfect, albeit deceitful, representation of the truth and thus insufficient for a meaningful life. And, as will become clear, inner life is essential not only for political authority but also for functioning politics (as opposed to political thought).

³⁰⁹ Hannah Arendt, “The Crisis in Culture,” in *Arendt, Between Past and Future: Eight Exercises in Political Thought* (New York, 1968), 197–226.

³¹⁰ Markell, “Politics and the Case of Poetry,” 25.

³¹¹ Nikki R. Keddie, *An Islamic Response to Imperialism* (Berkeley: University of California Press, 1983), 152.

³¹² Teena Purohit, “Jamal al-din al-Afghani and Syed Ahmad Khan: Reform, Rivalry, and Heresy in late 19th century India,” *South Asia Seminar* (St. Antony’s College, University of Oxford, 30 May 2017).

³¹³ Keddie, *An Islamic Response*, 156.

Khomeini and Fadlallah, however, were not remote—to use Arendt’s term—from public participation but rather from certain aspects of religion that might limit their political aims. This “remoteness” allowed for a freedom of politics from religion and of religion from politics. At the same time, our two ayatullahs engaged in esotericism in order to determine how politics and religion impact public life and affect political action. While some modern Christian mystics considered mystical poetry and religion private endeavours, Fadlallah and Khomeini’s poetry, whether published or not, is an important reflection of their ideal political actions.³¹⁴

For both, divine truth, a hidden truth, is neither philosophical nor distorted fact. It is instead a factual truth that one is certain exists yet cannot be wholly defined. The goal is thus to elucidate this hidden truth as factual truth, however ambiguous. Although the precise qualities of truth’s ambiguity are pursued through an inner life, this inner life does not connote the purely private life of an individual. As such, one should not presume that Fadlallah and Khomeini used poetry to justify what some might believe was a private betrayal of their public piety, for it is impossible to corroborate this claim. Rather, one must judge their politics and piety based on their effects.

³¹⁴ The eminent philosopher William James (d. 1910), who had retreated from a life of science to that of philosophy after a period of disillusionment, argued that God’s “abstract objects,” such as absoluteness, infinity, justice, as well as “soul” or even “God” himself give a certain nature to everything we see. James contested, however, that “mystical truth exists for the individual who has the transport, but for no one else,” it is thus a private truth and retains no authority outside of the individual. See William James, *The Varieties of Religious Experience: A Study in Human Nature* (New York: Longmans, Green, and Co, 1917), 54 and 397. Vanessa Martin also notes that James was read by those closest to Khomeini, particularly Mutahhari. See Martin, *Creating an Islamic State*, 93. See also Murtaẓā Mutahharī, “Khūrshīd-i dīn hargiz ghurūb nimī shavad,” in *Imdād-hā-yi ghaybī dar zindigī-yi bashar* (N.p.), 33-34.

Arendt's position on the politics of poetry might explain what an inner life means and why Khomeini, a more active political figure than Fadlallah, wrote in a more classically esoteric style. Khomeini's proximity to the political world might have necessitated his poetic and private withdrawal from it. In other words, in order for his theory of state to function, the unknown had to remain in a space outside of a visible political arena, as many of his decisions functioned without transparency.

We remember from chapter one that Khomeini transformed *maṣlaḥa* from a purely legal concept into one requiring a degree of secrecy in the state's decision-making processes.³¹⁵ While *maṣlaḥa*'s previous theorists and executors formulated mostly transparent methods for its use, i.e., with formal reasoning, Khomeini and Fadlallah lacked a clearly presented method.³¹⁶ With *maṣlaḥa*'s centrality in Khomeini's (and later the Islamic Republic's) decision-making processes, it demanded the autonomy of a space—an inner life—in order to retain any authoritative power. For if all decisions are transparent, that is, if they are all under complete and equal scrutiny, the autonomous space of authority would be neutralised and rendered purposeless; that space of authority would become like any other space. This idea is explained in more depth in chapter four. Nevertheless, it should be noted that a lack of autonomy in decision-making would result in the destruction of any sovereign power that a state or leader might possess.

This explains in part why in Saudi Arabia, where Islamic law is interpreted literally, the *muḥtasib*—generally tasked in Saudi Arabia with supervising public and private adherence to the principles of the *sharī'a*—has broad authority to investigate

³¹⁵ *Rūznāma-yi Sharq*, “Rāh-i ḥal-i nukhust-i fahm-i maṣlaḥat.”

³¹⁶ See the introduction to this dissertation.

public and private crimes in addition to gathering and assessing the proof of a crime. In other words, the *muhtasib* has broad authority to command right and forbid wrong. More important than the lack of separation of powers, this precludes any clear provision regarding the use of *ijtihād* or discretion outside of the parameters of divine or customary law.³¹⁷ All power to command and forbid—to assess, investigate, and charge—is therefore delegated to the Saudi *muhtasib*. While this arrangement is at clear odds with the Islamic Republic’s approach to commanding and forbidding, which remains an important precept for all citizens, it has important implications for the sovereign use of *maṣlaḥa*.

In addition to a lack of clarity on *ijtihād*’s use, the Saudi *muhtasib*’s authority to administer and judge according to a broad common good through *ijtihād* ironically allows for the “closing off of expediency (*sadd al-dharā’i*’).” This understanding of law is precisely what justified the legal prohibition on women driving in Saudi Arabia until September 2017.³¹⁸ Instead of ruling according to a communal interest or an interest that prioritises the state’s welfare, and instead of an interpretation of Islamic law that might enable alternative politics through esoteric components, as occurs in the Islamic Republic, judgements are made according to an interpretation of law that, in attempting to co-opt all ethical authority, in fact work against the idea of expediency and sovereignty.

³¹⁷ Vogel, “The Public and Private in Saudi Arabia,” 749; *Ibid.*, 759.

³¹⁸ *Ibid.*, 763; “*Sadd al-dharā’i*’ is based on the *Shārī’a*’s tendency to prevent evil (*dar’ al-mafāsīd*) and a legal maxim states that it has preference over achieving good (*jalb al-maṣāliḥ*). *Sadd al-dharā’i*’ is viewed as a continuation of *maṣlaḥa mursala* rather than an independent source. Despite this, *sadd al-dharā’i*’ is often included in the books of law as an alternative legal source...” See Izzi Dien, Mawil Y., “*Sadd al-Dharā’i*’,” in *Encyclopaedia of Islam, Second Edition*, ed., P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. URL: http://dx.doi.org/10.1163/1573-3912_islam_SIM_6414.

In the Saudi case, disabling those esoteric components of law and politics disallows for sovereign authority because this method of interpretation prevents any judgemental gravitas or authority outside of a literal (as strictly methodical) reading of Islamic law. Without judgemental gravitas or authority, there exists no sovereign exception by which an autonomous decision is made based on exigency. The ruling to allow women to drive was, in other words, not made based on any consideration of the common good but on purely moral arguments in Islamic law, taking political interests into account only as a secondary consideration.

For Khomeini, the esoteric components of religion—the very components that obfuscate *maṣlaḥa*'s clear legal methodology—allowed for politics that eschewed complete transparency in the service of sovereignty. To be sure, *maṣlaḥa* as a tool for sovereignty, that is, a means by which an exceptional decision is made, has a potential historical antecedent in Sa'dī's (d. 1291) *Gulistān* (completed in 1258). In *Gulistān*'s first story of the first chapter, “Dar sīrat-i pādishāhān (On the Conduct of Kings),” we discover *maṣlaḥa* both as a king's exceptional justification for clemency as well as a means to maintain communal cohesion.

In Sa'dī's story, a prisoner, when faced with his imminent execution, proceeds to insult the King as his final expression of despair. When the King asks one vizier what the prisoner had said, the vizier lies: “My lord, he says: Those who bridle their anger and forgive men; for Allah loveth the beneficent’.” The King, overcome with compassion and mercy, decides to spare the prisoner's life before a second vizier corrects the first in so as to “speak nothing but the truth in the presence of kings.”

Resentful of the second vizier's motives, the King replies: “That lie was more acceptable for me than this truth, which you uttered, because the first was based on *maṣlaḥa* while the second was based on malice. And wise men have said, ‘an expedient lie is better than a seditious truth’.”³¹⁹ We never discover whether clemency was granted to the prisoner, but the outcome is unimportant.

Although Sa‘dī’s *maṣlaḥa* is based neither on Islamic law nor a method of governance that prioritises a republican state over a monarchy, as Khomeini theorised, we nevertheless find *maṣlaḥa* in the service of sovereignty and esoteric poetry as a tool for cohesion. Sa‘dī’s *Gulistān* generally focuses less on Islamic law than on social ethics, according to Franklin Lewis, and thus we should not be surprised by his disinterest in justifying decisions with theological reference. Sa‘dī’s collection has even been faulted for its “Machiavellian” tint.³²⁰ But his poetic style of advice literature is hardly different in general intent from Khomeini or Fadlallah’s poetry, notwithstanding historical content and context, meaning, that all three intended on an esoteric approach to public life and governance. Furthermore, and perhaps more significantly, all three, unlike the Saudi approach, attempt an autonomy of politics from religion through their esotericism, that is, they all freed themselves from the theological constraints that the Saudi model embraces.³²¹

³¹⁹ Abū Muḥammad Muṣliḥ al-Dīn bin ‘Abdallah Shīrāzī (also known as Sa‘dī), “Bāb-i aval: dar sīrat-i pādīshāhān,” in *Gulistān* (1258). URL: <https://ganjoor.net/saadi/golestan/gbab1/>.

³²⁰ Franklin Lewis, “GOLESTĀN-E SA‘DĪ,” *Encyclopaedia Iranica*, XI/1, 79-86. URL: <http://www.iranicaonline.org/articles/golestan-e-sadi>.

³²¹ A note of tangential significance: it is interesting that *maṣlaḥa*, commonly translated as “expediency” in Sa‘dī’s story, is translated the same when referring to the Expediency Council, the very body that employs *maṣlaḥa* as a decision-making tool in the Islamic Republic. In other words, Khomeini found in “*maṣlaḥa*” a legal tool by which sovereignty could be expressed through its esoteric components. The idea of expediency and an important concept in this world and the next recurs in

While Hanaway argues that poetry's classical style is best suited for a committed believer to express one's mystical feelings, that Fadlallah expressed his mystical feelings through a style atypical of classical mystics reflects his approach to politics. Fadlallah's esotericism was subtler than Khomeini's. It is impossible to determine why this was the case, but perhaps this difference best reflects the former's political initiatives, which operated at a social level and were less directly related to matters of state politics. If we view politics from Fadlallah's perspective, there was little need for such blatant esotericism because his political actions were more embedded in social relations than in a higher political sphere through a state. He had once said of the *fuqahā*'s position on politics that, by studying what is in the highest Islamic interest (*al-maṣlaḥa al-islāmiyya al-'uliyā*) based on sources and objective circumstances, they should take either a "passive political stance or an active political stance." But these political stances mostly entail defining beneficial social relations between governments, organisations, and people, while assessing and advocating proper ethical behaviour in order to strengthen a community.³²²

The alliances serving the highest Islamic interest, Fadlallah wrote in his *Discussions in Thought, Politics, and Society*, are not alliances between communities of believers and unbelievers, but rather between positions which serve one program or another. The details of these positions, he continues, must be studied carefully because weak nations are often pitted against or allied with stronger nations, the power imbalance between which leads to changes in legislation. In these cases, "the

Sa'dī's *Bustān* as well. See Homa Katouzian, *Sa'di: The Poet of Life, Love and Compassion* (Oxford: Oneworld Publications, 2006), 72 and 129.

³²² Fadlallah, *Ḥiwārāt*, 537-39.

absence of conditions of a power balance then leads to the legislative process [enabling] the strong to control the weak in the name of the ‘alliance’.”³²³

Despite his frequent and clear attacks on colonialism in many of his writings, including in parts of his *Discussions*, Fadlallah in this case provides neither specific examples nor context for his pleas. On the surface, Fadlallah is ambiguously discussing relations between governments, organisations, and communities. But one might also argue that he was addressing existing debates within Islam during the late 1990s and early 2000s when this text was published, before America’s invasion of Iraq in 2003—a period during which the mechanisms of Islamic authority, especially Sunni authority, were changing and when al-Qā’ida’s popularity reached its peak.

He makes clear, without referencing Shi‘i or Sunni doctrine, that *maṣlaḥa* in certain situations can in fact function as a call to defensive yet practical solutions. He also argues that *maṣlaḥa* maintains direct links to commanding right and forbidding wrong. In these cases, Fadlallah explains, “if there is no specific text for us [in the Qur’ān or Sunna], there is on the other hand a general text which commands us to do right,” and “demands of us to call to the good and forbid the wrong and to face the arrogant.”³²⁴ Commanding right and forbidding wrong is therefore a default duty and a necessary recourse to practical problems when there is a lack of authoritative text or persons. At the same time, *maṣlaḥa* as benefit provides a barometer for the appropriate method to implement the duty to command and forbid; it is a tool by which states and communities might make legislative and political decisions.

³²³ Ibid., 538.

³²⁴ Ibid., 537.

If we decide to entertain the argument that Fadlallah was addressing growing networks of Islamists, for whom authority is at odds with traditional seminary education, the above discussion might be a not-so-subtle attack on Usama bin Laden's popular appeal as an authority without formal seminary education. As such, bin Laden should have no such authority over *maṣlaḥa* so as to decide what is best for Muslims.

Fadlallah indeed claimed to be one of the first to condemn the 9/11 attacks on the World Trade Center.³²⁵ During the period surrounding the attacks, which also coincided with the publication of his *Discussions*, Fadlallah gave two separate interviews in which he rejected the legitimacy of the attackers' martyrdom and accepted the possibility of Bin Laden's trial in an "impartial Muslim court."³²⁶ Despite the argument that Bin Laden, however immoral, abided by the medieval legal norm for declaring *jihād* by recognising the Taliban leader, Mullā Muḥammad 'Umar (d. 2003), as commander of the faithful, Fadlallah accepted that the attacks would be legal only if "supreme human interests (*maṣlaḥa*), of which Muslim interests are a part," depended on the attacks, which, he points out, they did not.³²⁷

That Fadlallah appears less concerned with the quotidian aspects of theology, such as Bin Laden's "legal" recourse to *jihād*, than he does with practical matters, corroborates the argument that, despite being a jurist—and indeed by this point a *marja'*—he was able to freely employ *maṣlaḥa* to justify supreme Islamic interests,

³²⁵ Muḥammad Ḥusayn Faḍlallah, "An al-irhāb," interview with *al-Zamān* (27 October 2001). URL: <http://arabic.bayynat.org/DialoguePage.aspx?id=3657>.

³²⁶ Ibid.

³²⁷ Richard Bulliet, "It's Good to be Caliph," *Politico* (7 July 2014). URL: <http://www.politico.com/magazine/story/2014/07/its-good-to-be-the-caliph-108630>; Muḥammad Ḥusayn Faḍlallah, "Al-mawqif min al-ḥarikāt al-islāmiyya al-salafiyya," *al-Nahār* (19 September 2001). URL: <http://arabic.bayynat.org/DialoguePage.aspx?id=3659>.

and, in so doing, human interests. Ironic it is that many in the West became as concerned with the minutiae of legality of Bin Laden's actions as had the al-Qā'ida leader himself.³²⁸ Both camps approached Islam from two sides of the same coin. For those who are not formally educated in Islam, as Fadlallah and Khomeini might argue, cannot effectively free themselves from theological concerns, hence the importance of clerical authority in Shi'ism, an aspect that I will discuss presently.

Messianism as a Means for Esoteric Politics

While the above might explain Fadlallah and Khomeini's personal approaches to private and public life, as well as political life, what implication—or application—do these approaches have for the larger political world? Khomeini wrote, in his *Mystery of Prayer*, that man has two degrees. “One degree is that of the world (*dunyā*) and witnessing (*shahādah*), the other is that of the hereafter (*ākhirah*) and the unseen (*ghayb*).” These two degrees are manifested in the perfect man as divine volition that emanates from the unseen, on the one hand, and from what is material and of this world on the other.³²⁹ But this dichotomy also functions as a metaphor for messianic law in this world and the next, as law with an exoteric and esoteric component.

The perfect man is associated in Shi'ism not only with both material and unseen degrees but first and foremost with the Prophet Muḥammad and the twelve Imams. These Imams are descendants and custodians of the Prophet and his authority, the twelfth of whom is also known as the Mahdi (the Messiah) who went into hiding

³²⁸ Jacques Steinberg, “Experts Say Bin Laden is Distorting Islamic Law,” *The New York Times* (8 October 2001). URL: <https://www.nytimes.com/2001/10/08/national/experts-say-bin-laden-is-distorting-islamic-law.html>.

³²⁹ Khomeini, *The Mystery of Prayer*, 13.

in the tenth century and will establish just Islamic government upon an apocalyptic return. Man's relationship to this structure of authority and prophethood was central to Khomeini's thought³³⁰ and, as discussed above, vital to Fadlallah's perception of prophethood.

The above divisions explained by Khomeini are common in Shi'ism and therefore do not appear at first glance to be particularly innovative or even significant for Khomeini's thought, especially in relation to Messianism. According to the historian Marshall Hodgson:

Shi'ism's most important expressions were a generalized expectation of the coming of a Mahdi, a descendant of Muhammad... more or less associated with this, a special reverence for the person of Muhammad which (largely through the medium of Sufi thinkers) was given metaphysical status as expression of the cosmic Light of Muhammad.³³¹

However, the ways in which Khomeini and Fadlallah deployed these divisions for political purposes is unlike previous formulations. Taking the above into account, it is thus arguable not only that the hidden qualities in Fadlallah and Khomeini's poetry represent the mystery of the twelfth imam—and the perfect man's hidden degree—but also that the most private or hidden aspect in Shi'ism is the twelfth imam.

Establishing messianism as an important element of Fadlallah and Khomeini's thought and intention is, as this section argues, essential for

³³⁰ Although Knysh argues the above, he nevertheless maintains that Khomeini "seemed unwilling to concentrate on the doctrinal differences between the Sunnis and the Shi'as, and in the context of the cosmic and metaphysical theories discussed in his early writings, these differences seemed to appear to him as matters of minor significance." See Knysh, "'Irfan' Revisited," 644. But these texts, which focus on Shi'i mysticism and eschatology, are among Khomeini's earliest works.

³³¹ Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization* vol. 2 (Chicago: The University of Chicago Press, 1974), 446.

understanding the larger political arena in which they functioned. Agamben saw in messianism the conflict and intersection of philosophy, law, and religion, but he never envisioned a resolution to this intersection, as Fadlallah and Khomeini had endeavoured. Without the concept of the Messiah, those esoteric aspects of religion and law would have no point of confrontation with the political and thus no significance to the worlds in which Fadlallah and Khomeini functioned. Without messianism, in other words, *hisba* and *maṣlaḥa* would be incomplete ethical and political tools because they are, at their very core, essential to Islam, dependant on divine authority which awaits the Messiah's return.

For Agamben, the Torah in Judaism represents messianism's conflict between its political and worldly aspects, as well as its spiritual and supernatural aspects. This conflict in the Torah, as a material representation of divine law, marks the presence of two worlds, not in compromise but in accompaniment; these worlds, for Agamben, are not irreconcilable but instead an illumination of the hidden. The Torah's divine law thus possesses a "profound philosophical intuition." The "philosophical" here is not the brand of philosophy derided by Khomeini and Fadlallah but one that reveals the existence, but not the details, of the esoteric; it is a philosophy that is confronted until the Messiah's arrival.³³²

In Islam, however, there is no codified law, and thus the conflict in Shi'ism between worldly and spiritual messianism is primarily demonstrated with the above two degrees of man—bereft of law in material form—to reflect the imperfection of the present, that is, the period since Muḥammad's death until the Messiah's return (or arrival). Although messianism in the present—for Shi'ism and Judaism—is a point of

³³² Agamben, *Potentialities*, 166-68.

contention and confrontation between religion and politics, or between the divine and the legal, the paradox is that the conflict between religion and politics is not completely resolved until the Messiah arrives and eradicates this confrontation to establish a singular, just order. For both Shi‘ism and Judaism, in other words, messianism marks not only the *conflict* between religion and politics but also the *limits* of religion and politics. Without divine law’s direct material manifestation, as with the Torah, Fadlallah and Khomeini were able to formulate their politics in more creative and innovative ways.

Their creativity involved a rejection of the traditional apoliticism among jurists in favour of a more active approach to politics—which, for Khomeini, included overthrowing a state and, for Fadlallah’s activism, necessitated a withdrawal from the state. Fadlallah and Khomeini attempted in these ways to reconcile the worldly and spiritual aspects of messianism. Fadlallah and Khomeini, however, would not have been able to adopt these positions without a brand of legitimacy derived from their authority to interpret the will of the twelve Imams during the *ghayba* (absence) of the twelfth one. Prior to the late-nineteenth century, Shi‘i jurists struggled with illegitimate rulers, often a king. And although, until Khomeini, they never advocated revolution, they attempted “to influence governments so as to bring them close to a practical justice or even to the acquisition of a theoretical legitimacy.”³³³ This juridical position is labelled quietism (*al-intizār*), which discourages active participation in politics while awaiting the Messiah. However, when Fadlallah began writing for the Iraqi Da‘wa Party editorial, *Al-aḍwā’*, Khomeini had not yet written

³³³ Norman Calder, “Accommodation and Revolution in Imami Shi‘i Jurisprudence: Khumayni and the Classical Tradition,” *Middle Eastern Studies* 18, no. 1 (1982): 3-20, at 7.

his first collection of religious opinions in which he abandoned any appeal to quietism to advocate for revolution against the shah.

In a subsection of his *Qaḍāyānā 'alā ḍaw' al-Islām*, first published in 1960-61 in Iraq and titled “The Risks of Quietism,” Fadlallah critiques “futile debate” and non-action. Before launching into this critique, he makes clear that the problem for contemporary Muslims is: “we have diverged from the (straight) path and placed (to the side) its features and effects. We remain wandering in the ignorant ideological, ethical, social, and spiritual labyrinth...” and must try to return to a path of effective action.³³⁴ For Fadlallah, this ignorance was a product of Iraq’s political atmosphere in which secular nationalism and socialism dominated at the expense of Islam without serious opposition from a united Islamist front until the Da‘wa Party was established in the 1960s. He asserts:

We must not wait to spend time in futile arguments that do not work and do not provide anything... we must decide to act in principle and then go into the details... because time is no longer likely to wait and wait, every minute goes on and every moment passes.³³⁵

Non-action, for Fadlallah, reflects ethical, social, and spiritual deficiencies regardless of time’s passing. Action, for Fadlallah, is actually necessitated by time, which hastens Judgement Day and awaits no one and nothing.

Fadlallah then stipulates that action must involve a spiritual component:

How do we act? What kind of action? What are its means and goals? And what are its values and its consequences? It may be sufficient to find a serious atmosphere of thought, dominated by spiritual faith in action and a need to focus on a solid foundation.³³⁶

³³⁴ Fadlallah, *Qaḍāyānā*, ك.

³³⁵ *Ibid.*, 11.

³³⁶ *Ibid.*, 11.

Advocating for an “atmosphere of thought, dominated by spiritual action” as a guiding force for politics thus pushes secular philosophy to the margins. Rather than attempting to control philosophy—in Agamben’s terms—Fadlallah instead endeavoured to control the methods of inquiry and discussion for which a temporal “spirit”—in the esoteric—is known to exist. But he does not yet explain what this spirit might be. The relationship between temporality and politics will be discussed later, but it is an important distinction from spatiality in which the material—one of man’s degrees—is manifest.

In his Qur’ānic exegesis, published years later in the late 1990s—after an impending political apocalypse was avoided in the Lebanese Civil War—Fadlallah explains what spirituality means as it exists during the interim period between the Prophet and the Messiah. Although this interim appears precarious until the Messiah returns to endow time and space with certain meaning, Fadlallah contends that one’s spirituality during such an era will be judged on the final day. He focuses on the following Qur’ānic injunction referring to Judgement Day: “And when those who wronged see the punishment, it will not be lightened (*takhfif*) for them, nor will they be reprieved.”³³⁷ And his explanation is as follows:

‘And when those who wronged see the punishment’ [refers to] those who wronged themselves with infidelity or idolatry and misguidance; ‘it will not be lightened for them’ reveals the atmosphere of the verse when they (those who wronged) asked for reprieve because the magnitude of torment was appropriate for the size of sin or deviation; and ‘nor will they be reprieved’ if

³³⁷ Q.16:85. A subsequent verse, Q.16:89, reads as follows: “And [mention] the Day when We will resurrect among every nation a witness over them from themselves. And We will bring you, [O Muhammad], as a witness over your nation. And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims.”

they request a delay to another time because there is no situation of waiting or delay... there is only the inevitable fate.³³⁸

We find here an emphasis on spiritual vigour, which is possible only during the interim when time is both stagnant and corrosive. One can sin and harm one's spirit, but time also means nothing for one's spirit until it ends with the Messiah's arrival. There exists simultaneously individual and communal judgement. All actions until the arrival of the Messiah are a product of free will and these actions are amalgamated, to be judged on their "size," upon his arrival.

It is perhaps noteworthy that judgement is the one consistent action practiced by the common man, during the occultation, and also by the Messiah, upon his arrival. With free will, one is responsible to judge oneself based on internal rather than communal coherence while the Messiah judges a community based on *a priori* principles. But communal coherence, that is, a community's sense—common sense—depends on internal cohesion. Although the maintenance of internal cohesion is based on practicable principles, these principles are not rationalised through a scientific method. They cannot be learned by demonstration because judgement must be based on particular cases, which individuals experience in order to develop a "sense of the common"—a sense of community.

As such, judgement is both an intellectual and moral virtue, which reflects a sensible individual's ability to judge an object's perfection or imperfection based on

³³⁸ Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur'ān* vol. 13 (Beirut: Dār al-malāk, 1998), 276.

communal effects.³³⁹ But there is no complete detachment of the subject in its judgement of an object. Spirituality is personal and cannot be judged by another human even with an effort to detach; and here we are reminded of chapter one's discussion on apostasy's lack of codification in the Islamic Republic. At the same time, judgement cannot exist without a pre-condition—a prejudice.

With one's judgement and one's spiritual merits comes sense of community. But when final judgement occurs, all judgement ceases; therefore, there is urgency only until the Messiah's arrival at which point all indiscretions and transgressions are no longer possible. The implication is that applying a communal moral law to human will is a concern of judgement. Even if judgement presumes an attempt to take the standpoint of another, it is always a private action—or the sum of private and individual actions—and subject to individuals (i.e., all members of the community) who also participate in judgement until the final day. Therefore, no matter how well established the principles for judgement might be, a degree of freedom from an ideal concept of judgement remains possible when adhering to those principles.

According to Fadlallah, the moment at which the Messiah arrives he receives ownership of justice and injustice alike, and thus the authority to judge. In Fadlallah's interpretation of another set of Qur'ānic verses that specifically invoke the Messiah, he explains this inheritance in terms of Paradise in a material world. The verse is as follows: "We had prescribed in the Book of Psalms after the reminder and admonition, that those of Our creatures who are good will in the end rule the

³³⁹ Hans-Georg Gadamer, *Truth and Method*, tr., Joel Weinsheimer and Donald G. Marshall (London: Continuum Books, 2004), 27-31.

earth.”³⁴⁰ And Fadlallah’s interpretation is: “There have been many conversations about the Prophet, his family, and his companions, that Imam Mahdi (the Messiah) is the one who inherits the land with his righteous companions to fill the land fairly and justly as it is filled with oppression and injustice.”³⁴¹

The Mahdi’s inheritance is thus not only material but also administrative, to which spirituality appears subordinate. Fadlallah explains this paradox with his interpretation of the subsequent verse, which states, “Here is a Message for mankind.”³⁴²

‘In this [Qur’ān] is a message for mankind’ [and] they worship God, as God wants them to worship Him within the administration of justice and the exhaustion of injustice, and openness in all matters and issues, to make their whole life in obedience and service (to God), and to receive His satisfaction. And these are the ones who feel that what Allah has descended upon them and what they have achieved is what they want in the world and the hereafter, if they follow His approach and follow His guidance and abide by His laws.³⁴³

A meaningful expression of the spiritual, and thus the Messiah, can be found only in the material, that is, in law, the Qur’ān, in justice, etc... For this reason, meaningful expression must be “revealed” to God’s worshippers through administrative measures, such as legal precepts or, later, institutions. The alternative to these material expressions is poetry which serves as an effective public expression of an individual’s—or even a concept’s—inner life; the expression of spiritual meaning and boundaries, not simply through general matter but through material

³⁴⁰ Q.21:105

³⁴¹ Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur’ān* vol. 15 (Beirut: Dār al-malāk, 1998), 277.

³⁴² Q.21:106.

³⁴³ Faḍlallah, *Tafsīr* vol. 15, 277.

regulation, is possible only with an inner or hidden life. As the divine saying goes: “I was a hidden treasure, and I wanted to be found.”³⁴⁴

We might remember from chapter one that Fadlallah, while in Najaf, discussed in “Bayn al-*maṣlaḥa* wa-l-*mafsada*” the Qur’ān as a fundamental truth, which allows for a “domain of freedom (*ḥurriyya*)” that “facilitates a scientific and cultural atmosphere.”³⁴⁵ The Qur’ān therefore paradoxically presents a fundamental truth, which cannot be debated, while allowing for a degree of freedom in interpretation. This paradox might best be explained by an acceptance of truth in revelation—in what is hidden then revealed. While Fadlallah’s conception of liberty (*ḥurriyya*) as a fundamental component of Islam and state, and thus of sovereignty, will be addressed in chapter four, his focus on a “domain of freedom”—a space—and its relationship to *maṣlaḥa* also allows for an acceptance and critique of the material world, which depends on something hidden. After the Iranian Revolution, however, Fadlallah’s use of *maṣlaḥa* would sharpen to combat Khomeini’s use of *maṣlaḥa* in revolutionary politics. I will address this shift in subsequent chapters.

The relationship between jurist and state changed fundamentally with Khomeini’s revolutionary vision of the *fuqahā*’s (jurists) role, about which he declared, “...the true rulers are the *fuqahā*’ themselves, and rulership ought officially to be theirs...”³⁴⁶ But the jurists about whom Khomeini speaks and among whom he functions rule only to implement the will of the Prophet and the Imams. This law is, in other words, an expression of imamate intent. Khomeini suggests:

³⁴⁴ Hodgson, *The Venture of Islam* vol. 2, 226.

³⁴⁵ Faḍlallah, *Qaḍāyānā*, 80.

³⁴⁶ Khomeini, *Islam and Revolution*, 60.

From the time of the Lesser Occultation [of the Imam] down to the present (a period of more than twelve centuries that may continue for hundreds of millennia if it is not appropriate for the Occulted Imam to manifest himself), is it proper that the laws of Islam be cast aside and remain unexecuted, so that everyone acts as he pleases and anarchy prevails? Were the laws that the Prophet of Islam labored so hard for twenty-three years to set forth, promulgate, and execute valid only for a limited period of time? Did God limit the validity of His laws to two hundred years? Was everything pertaining to Islam meant to be abandoned after the Lesser Occultation? Anyone who believes so, or voices such a belief, is worse situated than the person who believes and proclaims that Islam has been superseded or abrogated by another supposed revelation.³⁴⁷

In order to resolve the permissibility of political action during the occultation of the twelfth imam, Khomeini excavated those hidden qualities of messianism and Imamism to give them material form (in law and politics). He did this with the establishment of a state whose constitution defines Islamic sources as among its foundational legal texts while placing the twelfth imam as a source of political and legal authority.³⁴⁸ Article 5 of The Constitution of the Islamic Republic of Iran reads:

During the Occultation of the *Walī al-‘aṣr* (may God hasten his reappearance), the *wilāya* and leadership of the *umma* devolve upon the just [*‘ādil*] and pious [*muttaqī*] *faqīh*, who is fully aware of the circumstances of his age; courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office...³⁴⁹

Although the political and ideological factors that contributed to the adoption of the 1979 Iranian Constitution were myriad, several central elements led to its ratification for which a brief overview is beneficial. In 1979, Khomeini and his supporters outmanoeuvred weaker and opposing platforms while driving the public to support the Islamic Republic Party’s (IRP) constitutional vision. One of the crucial ways by which the IRP, composed primarily of clerics and Khomeini’s closest followers, successfully propagated its vision of Iran’s 1979 Constitution was to

³⁴⁷ Ibid., 24.

³⁴⁸ See The Constitution of the Islamic Republic of Iran, Article 4.

³⁴⁹ Ibid., Article 5.

mitigate against opposition while establishing clerical supremacy among their constituency.

Contrary to what some scholars have claimed, Khomeini, well aware of his influence, realised that attempting to unilaterally ratify the constitution would be both unnecessary and risky lest he appear dictatorial.³⁵⁰ Instead, as Siavush Randjbar-Daemi shows, Khomeini tactfully took a back seat to the early stages of the Constitution's drafting process, which began in the winter of 1978 before the shah's departure from Iran on 11 February 1979. Khomeini's distance allowed for a kind of due process,³⁵¹ as he merely annotated from France his minor edits to the February/March draft, which was bereft of any reference to a *walī al-faqīh*; most of the *faqīh*'s eventual powers were first delegated to the Guardian Council.

Khomeini finally entered the public debate on 15 June 1979 after a new draft of the Constitution leaked to the public. In his first announcement, he reacted to the growing campaign against "Islamic" references in the Constitution—perhaps as a warning not to repeat the failures of the 1906 Constitution. "Do not wait for the Westernized intellectuals or those who do not adhere to Islam," he warned, "to air their own opinions first ... People who are knowledgeable about Islam should examine the current constitution instead."³⁵² Khomeini implored the public to demand a strong Islamic presence in their constitution while continuing his abstention from unilateral decision-making, thus "encouraging the religious community to produce its

³⁵⁰ Said Saffari argues that Khomeini and his IRP gained power "through a virtual *coup d'état*, whereby opposition factions were fatally weakened by the [IRP]." Said Saffari, "The Legitimation of the Clergy's Right to Rule in the Iranian Constitution of 1979," *British Journal of Middle Eastern Studies* 20, no. 1 (1993): 64-82, at 64.

³⁵¹ Siavush Randjbar-Daemi, "Building the Islamic State: The Draft Constitution of 1979 Reconsidered," *Iranian Studies* 46, no. 4 (2013): 641-663, at 646.

³⁵² *Ibid.*, 653.

own reactions,”³⁵³ or in other words, allowing popular consensus to drive decision-makers. This prompted more clerical participation to promote the inclusion of stronger Islamic institutions in the Constitution.

In fact, the inclusion of a *walī al-faqīh* was not discussed until Ayatullah Gulpāyghānī—who later opposed Khomeini and Rafsanjani’s use of *maṣlaḥa*—intervened that same June to call for its necessity, a call that Ayatullah Muntazirī, a close companion of Khomeini’s, echoed by advocating for a “just *faqīh*.” The growing popularity of the *walī al-faqīh*’s inclusion in the Constitution was justified by some as a way to avoid tyranny and idolatry on the one hand.³⁵⁴ On the other hand, Khomeini, who later became the first President of the Republic, warned against the president’s potential dictatorial powers.³⁵⁵ Establishing the *faqīh*’s powers above the president’s, militated against these dictatorial potentials, which were expressed in debates on Article 110. Despite fierce opposition, the IRP managed to ratify the article, bestowing on the *faqīh* command over the armed forces and the power to dismiss the president.³⁵⁶

The opposition argued, “by giving excessive power to the *faqīh*, the separation of powers was rendered meaningless”³⁵⁷ and because “the president must have the people’s confidence to win, any fear of a coup was disregarded as a mockery of the wisdom of the electorate.”³⁵⁸ Conversely, those in favour of a powerful *faqīh*, such as Mūsavī Tabrīzī, argued that a strong president could “dissolve the *Majles*,

³⁵³ Ibid., 653.

³⁵⁴ Ibid., 653.

³⁵⁵ Ibid., 656.

³⁵⁶ Saffari, “The Legitimation of the Clergy’s Right to Rule,” 77.

³⁵⁷ Mohsen Milani, “The Evolution of the Iranian Presidency: From Bani Sadr to Rafsanjani,” *British Journal of Middle Eastern Studies* 20, no. 1 (1993): 83-97, at 89.

³⁵⁸ Makarem Shirazi as quoted by Milani. Ibid., 91.

dismiss the prime minister, and impose himself as master of Iran,”³⁵⁹ an argument that warned against a Nasser-like coup and would have resonated with those who were aware of Egypt’s not so distant past.

During this period, Fadlallah continued to advocate for a “just *faqīh*,” assigning to the position a more regulatory role. He nevertheless encouraged political action during the absence of the twelfth imam, apparently supporting, but in reality, presenting an alternative political form to Khomeini’s concept of *wilāyat al-faqīh*. Fadlallah was among the first Lebanese supporters of the Iranian Revolution but his program of communal governance as resistance to larger political obstacles (i.e. reform and self-rule as social revolution), was perhaps an effort to resolve the apparent contradictions between contemporary Islamist movements. In other words, Fadlallah believed that reform for political change and mass revolution on a social level were both possible, with The Muslim Brotherhood and *Hizb al-da‘wa* as institutional-reformist movements on the one hand, and Sayyid Mūsā al-Ṣadr, Khomeini, and the *Fidāyān-i Islām*—as revolutionary movements—on the other hand.³⁶⁰ With this apparent compromise, he subordinated the urgency of the Messiah’s return as a source for revolutionary authority where Khomeini adumbrated it.

Eventually, the Islamic Republic’s Constitution was ratified by referendum in 2-3 December 1979 without significant comment by Khomeini. What these historical accounts of Iran’s post-revolutionary period miss, however, is that in Khomeini’s attempts to control the messianic properties of religion, politics, and law through his writings on governance and establishing messianic forms of authority we find an

³⁵⁹ Ibid., 90.

³⁶⁰ Sankari, *Fadlallah*, 178.

attempt to reinsert spiritual meaning into these material forms. Doing so, Khomeini in effect postponed the Messiah's arrival in order to give meaning to an Islamic republic during the Messiah's absence.

In his *Kashf*, written decades before *Vilāyat-i faqīh*, Khomeini promoted a vision of a virtuous city in which institutions determine divine law. The virtuous city was first proposed by the Greeks, then formulated by al-Fārābī (d. 950), and later adopted by Strauss, but Khomeini proposed a new "virtuous city":

It is in contrast with the government of God that the nature of all existing governments becomes clear, as well as the sole legitimacy of Islamic government. The duty of our government, which is among the smaller states in the world, is to conform to this legitimate government by making the laws passed by the Majlis a kind of commentary on the divine law. It will thus become apparent that the law of Islam is the most advanced law in the world, and that its implementation will lead to the establishment of the Virtuous City (*madīna-yi faẓīla*).³⁶¹

For Strauss, the State of Israel required an abandonment of traditional Jewish orthodoxy and the acceptance of a type of atheism by which Jews as historical subjects, rather than the Messiah, establish a Jewish state.³⁶² An Islamic republic, on the other hand, would place the Messiah not at the margins but at the centre of its politics. Khomeini accomplished this by splitting the Messiah into two bodies: Khomeini's nominal Messiah bears parallels with the Messiah ben Joseph, one of the two Jewish Messiahs "who," according to Gershom Scholem, "redeems nothing and whose destruction coincides with the destruction of history."³⁶³ This history, for Khomeini, is not a general human history but the Islamic Republic's history; it is a history that exists only during the political life of the state. There is also a legal

³⁶¹ Khumaynī, *Kashf*, 221-222. Citation from Khumayni, *Islam and Revolution*, 170.

³⁶² Tanguay, *Leo Strauss*, 13-20.

³⁶³ Agamben, *Potentialities*, 173.

Messiah, that is, the redeemer and legislator, a role historically reserved for the Messiah of the Catholic Church. But Khomeini's legal Messiah is instead located in the Islamic Republic's various offices and branches of government.³⁶⁴ This role is an administrative and regulatory role. For the Islamic Republic and Khomeini, the Republic redeems its subjects and acts as legislator to replace the Messiah(s) and render him useful only for postponement and the eventual destruction of history rather than for that which follows his arrival.

Despite the messianic elements that are essential to the Islamic Republic and Khomeini's political theology, the Messiah is in practice no longer redeemer nor legislator but rather an important symbol of authority.³⁶⁵ This symbol of authority is at once significant only with a medium through the office of Supreme Leader (i.e., Khomeini) and with divine redemptive power only through the legislative bodies of the state. In other words, the Islamic State, its institutions, and decisions are the material-exoteric expressions *par excellence* of the spiritual. As such, the supremacy of the state's welfare over all theological considerations is justified. Doing so, Khomeini (re)inserted not only spiritual meaning into politics and state but also material politics back into the spiritual, as long as the Islamic Republic exists.

Khomeini's theory and practice of governance that depends on temporal messianism draws on elements of the Indian philosopher Muḥammad Iqbāl's (d. 1938) conception of spiritual politics. Writing before the Iranian Revolution, Iqbal, unlike Khomeini, described Muslim messianic political time:

³⁶⁴ Ibid., 174.

³⁶⁵ Agamben points out that the Christian Messiah is both redeemer and legislator, which is different from Jewish messianism, a distinction that corroborates the two possible valences of messianic legitimacy in the Islamic Republic. Ibid., 173.

The truth, however, is that matter is spirit in space-time reference. The unity called man is body when you look at it as acting in regard to what we call the external world; it is mind or soul when you look at it as acting... The State, from the Islamic standpoint, is an endeavour to transform these ideal principles into space-time forces, an aspiration to realize them in a definite human organization...³⁶⁶

For Iqbal, there is a sacred order to the profane, a divinity to the material, which cannot be constructed by a theocracy as a state occupied only with religion. This profane matter is necessary in order for the theological to take political form. Iqbal, however, never translated this idea into revolution, as Khomeini had done. With a translation into revolution, Khomeini had also transformed a revolutionary doctrine into a political theology of the oppressed,³⁶⁷ which consisted—in Iqbal’s terms—of both an acceptance and “criticism of what we call material or natural—a criticism which discloses that the purely material has no substance until we discover it rooted in the spiritual” because this is the “greatest service that modern thought has rendered to Islam, and as a matter of fact to all religions.”³⁶⁸

Similarly, Fadlallah critiqued the purely rational sciences while accepting their material fruits. He argued in his *Tafsīr*, “rational principles are what connects [sic] us to the general thoughts and rules via limited experiments” in the material world.³⁶⁹ He was the first *marja’* to use modern scientific tools to track the lunar cycle

³⁶⁶ Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (New Delhi: Kitab Bhavan, 2013), 154.

³⁶⁷ I have borrowed this phrase from Jacob Taubes. See Jacob Taubes, *To Carl Schmitt: Letters and Reflections* (New York: Columbia University Press, 2013), 14.

³⁶⁸ *Ibid.*, 155.

³⁶⁹ Sayyed Mohammed Hussein Fadlallah, “Believing in the Unseen,” tr., Manal Samhat, *Bayynat* (20 December 2013). URL: http://english.bayynat.org.lb/Beliefs/Beliefs_Unseen.htm#.WckwIprzeR.

during Ramadan and the first to permit following a deceased *marja*‘.³⁷⁰ At the same time, Fadlallah critiqued those “limited experiments,” the likes of which have yielded the laws of thermodynamics and Newtonian physics, which were limited to fixed times and places. The various general conclusions that non-pious people draw about our world, Fadlallah argued, are often based on the results of those “limited” experiments without a serious understanding of any pre-assumptions or methods. Like his predecessor, al-Afghānī, Fadlallah’s critique targeted only the hypocrisy of pure reason, a hypocrisy which rejected the unexplainable in its esoteric forms. Fadlallah accepted, as addressed above, that metaphysics does not reject natural sciences. In fact, according to the Qur’ān, he points out, all political, social, and economic features of life, including its secrets, “are subjected to natural laws Allah has set [sic] to the universe.”³⁷¹

Interestingly, Fadlallah’s critique—which did not target the value of these sciences but instead their larger effect on popular epistemology—involved an acknowledgement of esotericism in all aspects of religious and non-religious life. Due to the popular acceptance of generalised conclusions based on limited experiments, he argues, non-pious people indeed believe in unseen forces, that is, faith in broad scientific explanations. Fadlallah compares this scientific faith to pious faith in metaphysics. “Everything around us,” he declares, “reveals that Allah does exist even

³⁷⁰ Fadlallah’s oldest son, ‘Ali Fadlallah, argues that Fadlallah “opened the door to” scientific lunar calculations and permitted stem cell and cloning research. See Marlin Dick, “The Daily Star, Lebanese daily: A year after his death, Fadlallah’s legacy alive,” *Bayynat* (4 July 2011). URL: http://english.bayynat.org/Tributes/Tribute_04072011.htm; Fadlallah also allowed for posthumous emulation, but only for old issues. For new issues, followers must refer to a living *marja*‘. See *Bayynat*, “Emulating Sayyed Fadlallah,” (n.d.). URL: http://english.bayynat.org.lb/FAQ/FAQ_EmulationAfterDeath.htm#.WcqP24przeQ.

³⁷¹ Fadlallah, “Believing in the Unseen.”

though we cannot see or materialistically sense Him, based on the rational rule which stipulates that anything possible ought to have an inducing cause that is not subjected to any other cause.” As such, one’s material senses are insufficient in both scientific and metaphysical faith.³⁷² Unlike Khomeini and Iqbal, in other words, Fadlallah attempted a much more systematic rebuttal of the rational sciences, attempting to acknowledge their value while showing that human judgement is imperfect and dependent on the unknown.

Iqbal’s rejection of the Enlightenment’s legacy also involved a rejection of the idea that separation of church and state is alien to Islam.³⁷³ “Church” is temporal because its authority is dependent on the Messiah’s eventual arrival while “state” is spatial. But establishing messianism as a fundamental basis for state authority—for which the Katechon functioned in Christianity and the eventual Mahdi functions in the Islamic Republic—endows the political with an anticipatory temporality. The result is a brand of anticipation in popular political imagination in which the state is elevated to the role of the arbiter of messianic law and time; this elevation then becomes one way in which communal cohesion is maintained. But how exactly is a governor to arbitrate these seemingly abstract principles? And must they refer to a state?

Fadlallah and Khomeini’s Answer

Khomeini’s revolutionary institutions were to serve as material channels through which divine law is implemented on Earth. Although institutions became the

³⁷² Ibid.

³⁷³ Faisal Devji, *Muslim Zion: Pakistan as a Political Idea* (London: C. Hurst & Co, 2013), 222.

practical means of providing *maṣlaḥa*, they also dictate the responsibility of the public to contribute to this task. Khomeini expresses this clearly in his *Vilāyat-i faqīh*, in which he justifies Islamic government through Islamic institutions that serve a public good.

It is the duty of all of us to overthrow the taghut; i.e., the illegitimate political powers that now rule the entire Islamic world. The governmental apparatus of tyrannical and anti-popular regimes must be replaced by institutions serving the public good and administered according to Islamic law. In this way, an Islamic government will gradually come into existence...³⁷⁴

In practice, grounding the public good in theological discourse allowed Khomeini to determine the character of the Islamic Republic's institutions by addressing the mechanisms that provide a common good in Islam. "The distinctive peculiarity of this revolution," as the preamble to Iran's Constitution reminds us, "lay in its ideological and Islamic character."³⁷⁵ Khomeini's Islamisation of politics reflects how institutions would justify their functions without necessarily reflecting an inseparability of religion and politics. Khomeini's assertion that politics and religion are never separate, despite evidence to the contrary in actual practice, is precisely what bolstered his authority.³⁷⁶ Norman Calder suggests:

Khumayni's rendering [of Islamic governance] is given apocalyptic and revolutionary significance by the implication that the divine law must be and can be put into practice without compromise. The use of the term *qanun* (in addition to the more traditional terms *shari'a* or *shar'*) emphasises his vision of the law as something practical and effective...³⁷⁷

³⁷⁴ Khumayni, *Islam and Revolution*, 147.

³⁷⁵ Asghar Schirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic* (London: I. B. Tauris & Company Ltd., 1997), 8.

³⁷⁶ "This slogan of the separation of religion and politics and the demand that Islamic scholars not intervene in social and political affairs have been formulated and propagated by the imperialists; it is only the irreligious who repeat them." In Khumayni, *Islam and Revolution*, 38. For a convincing interpretation, see Nequín Yavari, "Postcolonial Prophets: Islam and the Liberal Academy," in *Islam After Liberalism*, eds., Faisal Devji and Zaheer Kazmi (London: C. Hurst & Co., 2017), 91-104, at 100-101.

³⁷⁷ Calder, "Accommodation and Revolution," 12.

Khomeini's institutionalisation of divine law entailed practicality and efficacy for the sake of the common good. Asghar Schirazi's study on *The Constitution of Iran* attests to the checks and balances enshrined in the law, such as the Assembly of Experts, the Guardian Council, the Parliament of the Islamic Republic, and the presidency, which reflect the very character of the institutions serving the common good and to which the Constitution's preamble and Khomeini referred. Vanessa Martin also corroborates in her book, *Creating an Islamic State*, that secular elements of social justice, economic welfare, and security (arguably all aspects of *maṣlaḥa*) fulfil the state's goals.³⁷⁸ *Maṣlaḥa* thus functions as a way by which state institutions serve a material good, with spiritual legitimacy, while fulfilling the *sharī'a*'s goals.

The difference between *maṣlaḥa* in Khomeini's pre and post-revolutionary thought is that in his post-revolutionary thought he bestowed upon it an *ethos* whose purpose is to serve as an instrument of law and governance rather than revolution; he domesticated the concept so that it could function as a tool in creating sovereign exceptions—in a Schmittian sense. But *maṣlaḥa* eventually became an exceptionally routine mechanism of governance, leading to its institutionalisation in 1988 when the Islamic Republic's Constitution was in the process of amendment to include the Expediency Council.

³⁷⁸ Martin contends, "The preoccupation of Khomeini and his movement with social justice also pervades the constitution. It seeks to establish a just and balanced social system in which all are aware of their rights and duties... The states ideological objectives of the republic include creating prosperity, eradicating poverty and deprivation, and ensuring adequate food, housing, employment and health care..." in Martin, *Creating an Islamic State*, 159-60.

By the time the 1989 amendments were under consideration, Khomeini had died and it was apparent that his influence was irreplaceable. Ehteshami qualifies that "...without an Imam with...*baraka* [i.e. one like Ayatollah Khomeini], the Vilayet [Faqih] becomes simply another type of political secular state structure."³⁷⁹ Yet, Khomeini's death opened up new possibilities for these so-called "secular state structures," among which includes the office of *faqīh*, to assume roles in which politics takes precedence over persona. Despite Khomeini's assertion that religion and politics are inseparable to justify certain institutions, the practical methods of these institutions indicate a more nuanced reality.

Officially established by Khomeini's decree and permanently institutionalised with the 1989 constitutional amendments, today's Expediency Council operates according to several articles and constitutional clauses: 1) Providing consultation to the Supreme Leader in clarifying all government policies; 2) providing various kinds of recommendations for solving the difficulties of the government, which are not normally solvable by the office of Supreme Leader; 3) discerning expediency in circumstances in which the Guardian Council differs with the Parliament on balancing the *sharī'a* and the Constitution; 4) consulting on issues that the Supreme Leader refers to the Expediency Council; 5) supervising the implementation of the general policies of the government; 6) consulting the Supreme Leader in cases of amendment or amendment to the Constitution; 7) membership in the Constitutional Review Council; 8) selecting one of the *fuqahā'* of the Guardian Council for membership in the Provisional Leadership Council;³⁸⁰ 9) approving some

³⁷⁹ Ibid, 37.

³⁸⁰ According to Article 111 of the Constitution of the Islamic Republic, until the appointment of the new Supreme Leader, a council consisting of the president, the

of the leadership duties for implementation by the Provisional Leadership Council;
10) selecting alternative members of the Provisional Leadership Council in case of an inability to perform duties; 11) providing various recommendations for how the Provisional Leadership Council is to decide its tasks and duties.³⁸¹

After Rafsanjani's death in 2017, Ayatullah Hāshimī Shāhrūdī (d. 2018) replaced him as the Chairman of the Expediency Council. Born in Karbala, Iraq, the former Chief Justice of Iran (1999-2009) was not only a student of Khomeini's in Najaf, but also, and perhaps more significantly, a student of Muḥammad Bāqir al-Ṣadr.³⁸² Unlike Fadlallah, however, Shāhrūdī was both a member of the Da'wa Party and former leader of the Supreme Council for Islamic Revolution in Iraq (SCIRI) (*al-majlis al-a'lā li-l-thawra al-islāmiyya fī al-'Irāq*), which was established in Iraq during the Iran-Iraq War and carried the mantle of Islamic revolution after Saddām Ḥusayn's crackdown of the Da'wa Party. A former peer of Fadlallah, Shāhrūdī's radical leanings were neutralised after Khomeini's successful revolution, which subsumed the erstwhile SCIRI leader into the Islamic Republic's organs of government. Shāhrūdī, in fact, appears to approach legislation and politics in a comparable manner to that of Khomeini and Rafsanjani, stating: "Because Imam Khomeini regarded the preservation of the system as an imperative... The most

Head of the Judiciary, and a *faqīh* from the Guardian Council chosen by the Expediency Council shall temporarily assume the duties of the Supreme Leader. During this period, if any of the above members are unable to fulfil his duties for any reason, he will be replaced at the discretion of the Expediency Council.

³⁸¹ *Majma' -i tashkhīṣ-i maṣlaḥat-i nizām*, "Vazāif-i majma' -i tashkhīṣ-i maṣlaḥat-i nizām," (n.d.). URL: <http://81.91.157.27/DocLib2/About/Responsibilities.aspx.html>.

³⁸² *Hamshahrī Online*, "Zindigīnāma: Sayyid Maḥmūd Hāshimī Shāhrūdī (1327-)," (29 June 2018). URL: <http://www.hamshahrionline.ir/details/67662>.

important issue here [is] the issue of *maṣlaḥa*, and in cases where it was expedient, the law was passed, despite the Guardian Council’s opposition.”³⁸³

In contrast to Rafsanjani’s oft-labelled reformism, Shāhrūdī is presented by Alī Akbar Nāṭiq Nūrī as neither “in the right nor left nor in a faction”—meaning that he believes the council should possess neutral leadership.³⁸⁴ This might indicate that the Expediency Council is becoming further incorporated into the institution of the Guardian Jurist, instead of drifting toward independence, whose occupant is also *constitutionally* impartial, i.e., is a “just *faqīh*.” We might therefore argue that with this proximity, the Expediency Council is becoming, or is at the moment, endowed with the same messianic authority of the Guardian Jurist—with the duty to postpone the Messiah’s arrival; the Expediency Council is the body most closely connected, in theory, to the *walī*. In his interpretations of Rafsanjani’s efforts to revise the Expediency Council’s policies, Shāhrūdī explained that both temporal and spatial politics are involved. “[Rafsanjani] emphasised that this review should be conducted on the basis of the conditions of the day,” he says, “as well as the temporal and spatial exigencies that occur, and with the help of new deletions and new additions proposed by the Supreme Leader.”³⁸⁵

But how do “secularised” institutions within Khomeini’s Islamic system operate with the apocalyptic and revolutionary significance about which Calder wrote? Curiously, it appears that the establishment of taxing bodies facilitate this

³⁸³ Hāshimī Shāhrūdī, “Huviyyat-i majma‘ bā Ayatullah Hāshimī shikil girift,” *Rūznāma-yi ārmān-i imrūz* (15 August 2017). URL: <http://www.pishkhaan.net/news/35470/>.

³⁸⁴ *Rūznāma-yi I‘timād*, “Mustashārān-i maṣlaḥat-i niẓām” (15 August 2017). URL: http://etemadnewspaper.ir/?News_Id=83323.

³⁸⁵ *Ibid.*

vision. In *Vilāyat-i faqīh*, Khomeini draws direct connections between law, messianism, and unexpectedly, property. He answers his previously posed question: “From the time of the Lesser Occultation [of the Imam] down to the present... is it proper that the laws of Islam be cast aside?”³⁸⁶ His first answer invokes neither faith nor to authority but property as it relates to taxes. “No one can say it is no longer necessary to defend the frontiers and the territorial integrity of the Islamic homeland; that taxes such as the *jizya*, *kharaj*, *khums* and *zakat* should no longer be collected...”³⁸⁷

The benefits of property and capital, for Khomeini, are thus intimately linked both to messianism and law. Even *Guardianship of the Jurist* was based on a series of lectures delivered years earlier during his exile in Najaf about transactions related to property rights and endowments.³⁸⁸ If capital is essential to messianism and law in Khomeini’s iteration of governance, then we might argue that property is also part in parcel of esotericism.

Although the Expediency Council is not specifically tasked with taxing or commerce, a cursory glance at its approved policies reveals that commerce plays an important role.³⁸⁹ To be sure, we can trace the theme of property’s esoteric component as it relates to the public-private distinction through Khomeini’s earlier writings. In his *Risāla tawzīh al-masā’il*, published in the wake of Ayatullah

³⁸⁶ Khumayni, *Islam and Revolution*, 24.

³⁸⁷ Khumaynī, *Vilāyat-i faqīh*, 24. Translation from Khumayni, *Islam and Revolution*, 42.

³⁸⁸ Ali Rahnema, “Ayatollah Khomeini’s Rule of the Guardian Jurist,” in *A Critical Introduction to Khomeini*, ed., Arshin Adib-Moghaddam (Cambridge: Cambridge University Press, 2014), 88-114, at 89.

³⁸⁹ *Majma‘-i tashkhiṣ-i maṣlaḥat-i nizām*, “Siyāsāt-i kullī-yi pīshnihādī” (N.d.). URL: <http://81.91.157.27/DocLib2/Approved%20Policies/Offered%20General%20Policies.aspx.html>.

Burūjirdī's death as a version of his previously mentioned *Tahrīr al-wasīla*, Khomeini argued that in order for the territorial—or spatial—integrity of the “Islamic homeland” to be maintained, capital must be accumulated by the state and protected for the individual.

Extortion is one that dominates another person's property or right by cruelty and that is one of the great sins, which if committed one becomes involved in severe retribution on the day of reckoning. It is narrated from His Holiness, the Prophet, salutations of God to Him and to His relatives, that he who usurps a span of land from someone else will have, on the day of judgement, that land hung on his neck like a yoke from its seven[th] story. If one does not allow people to use a mosque and a school and a bridge, and other places made for the public, he has usurped their right...³⁹⁰

Khomeini's above argument more than distinguishes between property as an exoteric expression of the spiritual world on the one hand, and the Messiah's arrival on Judgement Day as an esoteric event, which can be neither predicted nor entirely understood on the other hand. He grounded discussions of private and public space in a lexicon of property and rights. But property and its corresponding rights are not constituted by a state with spatial authority, as it is in liberal forms of government, even if the state for Khomeini is the common body that upholds these rights.³⁹¹ He sees property and its corresponding rights, the infringement of which is not only illegal but also sinful, as tied to the temporal realm in which Judgement Day occurs.

³⁹⁰ Ruhollah Khomeini, *A Clarification of Questions: An Unabridged Translation of Resaleh Towzih Al-Masael by Ayatollah Sayyed Ruhollah Mousavi Khomeini*, tr., J. Borujerdi (London: Westview, 1984), 336.

³⁹¹ The classic self-interpretation of liberal Western modernity relies on a form of organised modernity, which revolves around “the institutional containment of society in the territorially demarcated nation-state.” This institutional containment of society grew out of the nineteenth century need to establish “new forms of a regulating social order” as a reaction to the pervasive inequalities in bourgeois segments of Europe. See Dietrich Jung and Kirstine Sinclair, “Multiple modernities, modern subjectivities and social order: Unity and difference in the rise of Islamic modernities,” *Thesis Eleven* 130, no. 1 (2015): 22-42, at 26-7. However reductionist this brief narrative might be, it is at clear odds with the Islamic Republic's organisation around a political-theological problem with temporal politics at its core.

On the other hand, laws concerning property as a right constitute the material, albeit political, expression of the Messiah in law—divine law that cannot be known in full (i.e., parts of the *sharī‘a* that are not apparent)—to be implemented only on Judgement Day.

Khomeini’s political expression of law can be found in his earlier work, *Kashf*. As Ervand Abrahamian notes, Khomeini wrote *Kashf* partially at the behest of wealthy bazaari merchants who opposed Rizā Shah’s centralised secular state and thus this piece of writing is bound to property from its nascent beginnings.³⁹² This does not mean that law and property must be twinned in every instance but rather that bazaaris, who have historically maintained close ties with Iran’s clergy and function within a capital system even if not traditionally Capitalist, play a crucial role in Iran’s revolutionary history.³⁹³ An in-depth discussion of the Islamic Republic’s political economy is outside the scope of this chapter but it is worth noting that the evolution of the country’s post-1979 economy reflects global capitalism’s influence on government policies, often without any overt “Islamic” justification.³⁹⁴

A testament to Khomeini’s political astuteness is that he used the Qur’ān and Islamic sources to support the marriage between property and messianic law vis-à-vis governance. He had even stated quite bluntly in his *Kashf*, “Islam protects private

³⁹² Ervand Abrahamian, “Perceptions of Private Property, Society, and State,” in *Khomeinism: Essays on the Islamic Republic* (Berkeley: University of California Press), 39-60, at 40.

³⁹³ Arang Keshavarzian, *Bazaar and State in Iran: The Politics of the Tehran Marketplace* (Cambridge: Cambridge University Press, 2008), 1-10.

³⁹⁴ Kevan Harris, “Pseudo-Privatization in the Islamic Republic: Beyond the Headlines on Iran’s Economic Transformation,” *Muftah* (10 October 2010). URL: <https://muftah.org/pseudo-privatization-in-the-islamic-republic-beyond-the-headlines-on-iran%e2%80%99s-economic-transformation-by-kevan-harris/#.WXVvH4qQzeQ>.

property.”³⁹⁵ But in order for his critique of the shah’s secular state to resonate with his followers, Khomeini also engaged in a brief historical investigation. One might not be surprised to learn that Khomeini’s investigation addressed how ancient Greek philosophy influenced Muslim philosophers and their mutual engagement with the material and spiritual worlds.³⁹⁶

For Khomeini, the political expression of messianic law, to be officially applied on Judgement Day, must be formalised, however imperfectly, in a material-political body of the state that has the power to tax. A political form would therefore be the vanguard of the spiritual defence about which Khomeini speaks. And accordingly, only Muslim jurists are capable of this defence, that is, to execute the law of the Messiah as a political act because they are the deputies of the imam.³⁹⁷ In other words, jurists straddle and mediate between the material and spiritual realms. Khomeini proposed that in order for his defence to be successful, the state should establish a council of pious and mediating jurists “who both know the laws of God and who are just and free of selfish motives, and who have no aim nor worldly ambition except the good of the people, and the execution of the law of God...”³⁹⁸ Although this quote is first and foremost about protecting “the good of the people,” he then links this “good” to property, not unlike the very principle of *ahammiyya* that once protected it.

At this stage of Khomeini’s political thought, he had not advocated a Guardian Jurist as the Supreme Leader of an Islamic republic. Rather, his ideal

³⁹⁵ Abrahamian, “Perceptions of Private Property, Society, and State,” 40.

³⁹⁶ Khumaynī, *Kashf*, 30-45.

³⁹⁷ Vanessa Martin, “Religion and State in Khumaynī’s *Kashf al-Asrār*,” *Bulletin of the School of Oriental and African Studies, University of London* 56, no. 1 (1993): 34-45, at 38-9.

³⁹⁸ Khumaynī, *Kashf*, 185. Reference from Martin, “Religion and State,” 39.

council would select a “just sultan who would not infringe the laws of God and who would hold back from oppression and transgression against life and property...”³⁹⁹

The defence of divine law addressed above is thus applied through a protection of public and private property—through “mosques, schools, and bridges,” as well as through private/individual property. Although the protection of public property facilitates a common good, the protection of private property is necessary only for the public to which it corresponds.

Protecting private/individual property as a defence of the spiritual in fact serves to check and balance those who attempt to usurp God’s authority by claiming ownership of all material things. “The establishment of a government that rules wisely for the people is necessary...” he tells us, in which “the people own each thing...” and “possessions are one’s own belongings. For [the only one] whose possession and authority in all mankind is correct and influential for wise governance is the Lord of the World who rules all creatures and is creator of Earth...”⁴⁰⁰ Of course, this was but one of many transgressions for which the shah’s regime was guilty but it is also perhaps the most significant political-theological justification for Khomeini’s redistribution of wealth and new system of capital transaction and regulation.

Despite Khomeini’s rhetorical protection of private property, in practice this protection extended to those who benefitted least from the shah without close political or economic ties to his regime. Khomeini’s new system, theorised decades after *Kashf*, began with post-revolutionary confiscations of private property from those

³⁹⁹ Ibid.

⁴⁰⁰ Khumaynī, *Kashf*, 181.

with alleged ties to the shah's regime.⁴⁰¹ After 1979, the shah's White Revolutionary reforms were reversed to promote a new vision of capital distribution when revolutionary courts in the cities and other local committees around the countryside seized the land of wealthy regime supporters while encouraging other revolutionary groups to do the same, advocating a tiller-centric model of land ownership.⁴⁰² Khomeini justified these post-revolutionary land seizures by accusing the landowners of "corrupting the earth (*mufsid fi al-ard*)," having usurped and misused the land.

The shah's White Revolution has its roots in initiatives following the 1953 coup d'état deposing Prime Minister Mossadegh and reinstating the shah. Major reforms began in 1961 with Prime Minister 'Alī Amīnī (in office 1961-1962; d. 1992) who was granted temporary power to rule by decree allowing him to initiate limits on land ownership and enable wider land ownership among sharecroppers. Eventually, after Amīnī's replacement, the shah held a referendum for his new "Revolution" for which he reportedly won 5,598,711 votes and against which only 4,115 voted.⁴⁰³ With his revolution from above, the shah attempted to assert his authority to reign and to bolster his leadership in propelling Iran into modernity.⁴⁰⁴ This transformation would be achieved through programs defined as fundamental stepping-stones for any country on the path to modernity and the shah would be the people's shepherd on this path. By 1962, along with land reform, which included government purchases of *waqf*

⁴⁰¹ Shaul Bakhash, "The Politics of Land, Law and Social Justice in Iran," *Middle East Journal* 43, no. 2 (1989): 186-201, at 187-88.

⁴⁰² Shaul Bakhash, *The Reign of the Ayatollahs: Iran and the Islamic Revolution* (London: I.B. Taurus, 1985), 195-200.

⁴⁰³ Mohsen M. Milani, *The Making of Iran's Islamic Revolution: From Monarchy to Islamic Republic* (Oxford: Westview Press, 1994), 46.

⁴⁰⁴ Ali M. Ansari, "The Myth of the White Revolution: Mohammad Reza Shah, 'Modernization' and the Consolidation of Power," *Middle Eastern Studies* 37, no. 3 (2001): 1-24, at 2-3.

lands to free up property in order to allow peasants greater participation in Iran's economy, the shah implemented programs to spread education in rural areas, nationalise Iran's forests, and extend enfranchisement to women.

Khomeini seized on the White Revolution to consolidate his popularity among those opposed to the shah's reforms. Although the extent of his opposition to the revolution is debated, he was undoubtedly opposed to the Revolution as a general program to modernise. Keddie argues that Khomeini never wrote or spoke against land reform, and, even if his recorded statements against land reform occurred, they were not known at the time.⁴⁰⁵ Vanessa Martin, however, provides a credible quote from one of Khomeini's speeches in which he says: "Why do they prepare cooperations which take money away from the farmers? The market in Iran will be destroyed and the bazaar and the cultivators lose out."⁴⁰⁶ And, upon his return to Qom from prison in 1963 he explicitly attacked the White Revolution by name.⁴⁰⁷

Although the redistribution of property into public and private domains was crucial for Khomeini's opposition, because public and private are, by definition, constituted by one another, messianic and esoteric politics are significant only for the public sphere. As Strauss had argued and Khomeini's ideas reflect, a community's internal coherence is maintained through public messianism. It is therefore

⁴⁰⁵ Nikki R. Keddie, *Modern Iran: Roots and Results of Revolution* (New Haven and London: Yale University Press, 2006), 360, footnote 8.

⁴⁰⁶ Martin, *Creating an Islamic State*, 62.

⁴⁰⁷ Khumaynī, *Ṣaḥīfa-yi Imām* vol. 1, 269. URL:
<http://farsi.rouhollah.ir/library/sahifeh?volume=1&tid=167>.

unsurprising yet noteworthy that Strauss's ideas have undergone a rise in popularity in recent years among Iranian intellectuals.⁴⁰⁸

In any case, public messianism within the Islamic Republic is trafficked through esoteric concepts related to anticipating the Messiah, Judgement Day, and poetry (both Khomeini's appreciation for it as well as the popularity of classical mystics among ordinary citizens). Private messianism, on the other hand, is essential for its public counterpart but it occurs as personal religious experiences, a hidden private life, which exists to provide public space with boundaries and social regulations. Khomeini reimagined these boundaries in order to construct the spaces in which the Islamic Republic would exist as both Islamic and republican, and in which he could govern according to his political vision.

For Khomeini, the survival of the Islamic Republic depended on a sharp distinction between public and private spaces. In contrast to liberal Western theories of the public sphere, which protect public space generally as a site of "rational-critical discourse" and "popular participation,"⁴⁰⁹ he almost completely blocked the Islamisation of private space. In the liberal ideal, authority functions in the public sphere where it can be contested, with theoretically equal participation, and with common goals and lexicon. Khomeini instead placed strict limits on discourse and conduct in public spaces whereby the diversity of political participation is exercised and reflected in official arenas, which promote voting, writing, art, and more, all of

⁴⁰⁸ Matīn Ghafāriyān, "Butshikana usṭūra-hā-yi mudurn-i tāriḫī: darbāra-yi Ku'intīn Askīnar bā bahāna-yi intishār-i kitāb bīnash-hā-yi 'ilm-i siyāsāt," *Mihrnāma*, no. 37 (2014): 268, at 268.

⁴⁰⁹ Craig J. Calhoun, *Habermas and the Public Sphere* (Cambridge, Mass; London: MIT Press, 1992), 4.

which are regulated (imperfectly it should be noted) by the state. This is not to argue that legislation avoided private matters but that Khomeini attempted to bolster the Islamised public sphere by mitigating state intervention of the private sphere, specifically with his prohibition on unwarranted searches and seizures.⁴¹⁰

Unlike Arendt's apprehension of the poet's proximity to politics, as a critic and observer of those in power, Khomeini's intimate concern with both politics and eventual messianic law provided a foundation for his transcendence of spatial politics. Because spatial politics is constrained by time's progress, political change, and geography, it avoids a serious confrontation with spirituality and the unknown. Khomeini's transcendence involved bringing messianic urgency to the fore, that is, politics that relate to time's cessation as a bulwark against the Messiah's arrival. With the public sphere's Islamisation, temporal politics appears to have been the method best suited to reconcile the spiritual and worldly aspects of messianism, for which Agamben, Strauss, and Arendt never provided an effective solution. Additionally, because Khomeini's approach to these issues was that of governance and government, property's role in space and time—in territory and theology—needed to be addressed. It is through these considerations by which public and private property appears to be the most lucid material expressions of esoteric politics to which Khomeini's vision could anchor itself; this vision involved a condition in which jurists alone have the ability to mediate between the esoteric and exoteric realms.

For Fadlallah, the rhetoric of property was more important for temporal politics regardless of a state's ability to regulate material capital. This is due to two

⁴¹⁰ Abrahamian, "Perceptions of Private Property, Society, and State," 40-41.

factors. First, as previously discussed, Fadlallah had an ambiguous relationship with state and non-state party politics. And second, despite his early support for the Iranian Revolution, he later distanced himself from Khomeini's vision of an Islamic republic because, as he contends in *Al-ḥaraka al-islāmiyya*, "[...some sites of revolution] existed in a fog of intellectual and political backwardness, in which they could not understand the meaning [of revolution], which is Islam—the vitality of the platform and the constitution of the nation (*umma*)"⁴¹¹ Still, property was an important theme in Fadlallah's perception of law and politics.

Fadlallah split his distinction of wealth as capital and property into two separate but closely related material and spiritual levels. Material capital can be used for corruption as well as benefit—for good and bad deeds—while spiritual capital is accumulated through earthly actions—good and bad deeds—and exchanged in the afterlife. Fadlallah's conception of capital in its material and spiritual forms is not unique, but his endeavour to advocate an ethically just world, rather than a state, for capital's regulation is unique and departs from Khomeini's Islamic Republic. For Fadlallah, as we shall see, ethics and politics instead of a state regulate his two forms of capital. Regulatory ethics and politics outside of, not only a liberal state in which political interest is rooted in capital, but also an Islamic one, provides an alternative answer to Agamben's conflict with the Messiah's role in law and politics.

Fadlallah begins his explanation of material capital with a critique of religious leaders who exploit capital, arguing "the heads of religion [like Rabbis and Priests] represent this (monetary) exploitation." "The Qur'ān," he continues, not

⁴¹¹ Faḍlallah, *Al-ḥaraka al-islāmiyya*, 296. Reference from Nachman, "Maṣlaḥa as Sovereignty," 104.

religious leaders, “[based on the verse paraphrased above]⁴¹² thus presents to us a paradigm of those who possess the official representation of religion” but are actually corrupt and exploitative. Fadlallah thus contrasts non-Muslim religious leaders with the Qur’ān’s true law, a law for which ethically just humans, first and foremost, instead of scholars, represent God’s will on Earth and serve as His exemplar.⁴¹³ God’s law can therefore be found within the Qur’ān, which provides for its readers a set of ethical obligations and duties.

For Fadlallah, God’s law determines the boundaries of earthly ethics that affect this world and the next. Human existence is not only defined by the material and earthly world but also of the afterlife—Paradise—in which we answer for our earthly transgressions. Financial exploitation is thus among the worst transgressions, as it was for Khomeini, and it must cease in order for truth and justice to reign on Earth and in Paradise.⁴¹⁴

Fadlallah takes his critique of religious leaders a step further, arguing that these leaders not only represent monetary exploitation but also that the modern exploitation of material capital *stems* from those clerics who manipulated divine law for their material benefit. Their manipulation of divine law and the ensuing corruption was but one cause for the subsequent colonialism that Evangelical missionaries promoted in Arab and Muslim lands. Fadlallah admits that the Qur’ān does not discuss in detail the ways in which religious leaders exploit capital. But it does pose a

⁴¹² Q.9:34: “O you who have believed, indeed many of the rabbis and the priests devour the wealth (amwāl) of people unjustly and avert [them] from the way of Allah.”

⁴¹³ Muḥammad Ḥusayn Faḍlallah, *Al-nadwa* vol. 17 (Beirut: Dār al-malāk, 2007), 23-4.

⁴¹⁴ *Ibid.*

distinction between those exploitative religious leaders and those who fear God while understanding truth and justice in the Qur'ān.⁴¹⁵

Fadlallah's language of materialism expressed two problems: corrupt religious leaders who exploit religion and its followers on the one hand, as well as a materialistic and ethically bankrupt world in which truth and justice are absent on the other hand.⁴¹⁶ Opposed to Khomeini's distinction of property in public and private life, Fadlallah was primarily concerned with wealth and property as an ethical tool rather than a political form that intersects the state. Fadlallah's ethical argument depended on his audience's change of conduct. While Khomeini's program focused on governing a state, Fadlallah's writings function as advice literature for a community outside of a state, supplemented only by public life and social programs to which none are lawfully beholden. In other words, ideas of citizenship focused on a state play no apparent role in Fadlallah's regulation and division of material capital in public or private spheres.

⁴¹⁵ Fadlallah's critique should not be misconstrued as one of general capitalism but rather a critique of strands of modern capitalism that forgo divine law and its esoteric principles. He never actually mentions capitalism by name but his use of capitalist lexicon, without an outright rejection of it, suggests a desire to incorporate into capitalist exchanges a more meaningful layer of action. *Ibid.*, 26.

⁴¹⁶ Fadlallah's invocation of truth and justice is fitting here. We might argue that justice, as a juridical truth, is also an exoteric expression of truth, which is unknowable in a singular form. The moment justice occurs it becomes a kind of truth manifested as an action, created and justified by political authority. Although justice is also subjective, it is nevertheless implemented according to certain empirical truths in liberal democratic societies; the state is its final author and thus decides its meaning—its juridical truth. For one study on truth and justice in liberal democratic societies, see Philip Pettit, "Habermas on Truth and Justice," *Royal Institute of Philosophy Lectures* 14, (1982): 207-28. This is why divine ethics for Fadlallah and divine law for Khomeini set the boundaries of their respective truths. Article 2 of The Constitution of the Islamic Republic of Iran states, for example, that God's justice is in "creation and legislation."

This is not to say that Fadlallah abandoned efforts to procure material capital in order to assist his fellow citizens—quite the opposite. As mentioned in chapter one, he dedicated much time and energy to assist the impoverished suburb in which he lived during the earliest days of the Lebanese Civil War. He also reportedly established over twenty orphanages, schools, Islamic centres and religious schools unbound by state funding and regulation.⁴¹⁷ But what, for Fadlallah, is the relationship between capital accumulation and divine law?

These social programs are reflected in Fadlallah’s explanation of capital’s role in public life to provide the impoverished with the means to support a spiritual movement. While Khomeini advocated for the protection of private property as esoteric political interests, Fadlallah’s vision of capital procurement affects an ethical movement and set of transactions that he explains in spiritual terms. Fadlallah praised the late ‘Allāma Ṭabāṭabā’ī’s (d. 1981) opinion on the following Qur’ānic verse:

Oh you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly and avert [them] from the way of Allah. And those who hoard (yakinzūn) gold and silver and spend it not in the way of Allah - give them tidings of a painful punishment.⁴¹⁸

Ṭabāṭabā’ī’s interpretation of the above verse is that wealth should not be hidden from the community but instead taxed by the “commander of the faithful (*amīr al-mu’minīn*)” for whom it is compulsory to use those taxes—in accordance with the *sharī‘a*—for the community’s defence, health, culture, and other needs.

⁴¹⁷ *Bayyinat*, “Life of Sayyid Fadlallah (ra)” (9 August 2011). URL: http://english.bayyinat.org/Biography/Biography_stages_life.htm#.WcVA5oprzeQ.

⁴¹⁸ Q.9:34. Faḍlallah, *Al-nadwa* vol. 17, 38.

Ṭabāṭabā'ī's opinion, according to Fadlallah, is flawed because it focuses not on esoteric principles but on the word "treasure (*kinz*)" from which the verb "they hoard (*yakinzūn*)" is derived. Consequently, Ṭabāṭabā'ī's opinion is "absorbed with 'treasure'," with a perspective limited to "[those who] refrain from making money for the sake of God and... those who live life for money." And so, Fadlallah tells us, this problem cannot be solved by speeches regarding "general economic issues," like the changes in liquidity within a community, because obsession with treasure is a spiritual problem.⁴¹⁹ Those who live their lives for the pursuit of money do not consider the implications of divine law and thus their property or capital is not regulated according to ethical principles. Consequently, no matter the commander of the faithful's regulations on taxation or income, these regulations avoid the problem's spiritual origins, which a state is unable to solve. Therefore, this was perhaps Fadlallah's way of liberating his community, if only theoretically, from political interest that is determined by private property.

Fadlallah's most revealing explanation of property's esoteric component is perhaps found in his short article, "Your Life is Your Capital and Your Only Real Investment." According to Fadlallah, capital is an earthly representation of aspects of divine law and something hidden in one's body, accumulated through deeds on Earth, and exchanged in the afterlife. "When man goes back to Allah's words in the Holy Qur'an," Fadlallah contends, "he will find that his life is his capital which he trades with God:" "if you fill it with good deeds and charities, then it will elevate you to a

⁴¹⁹ *Ibid.*, 38.

place close to God and you will enjoy the bliss of paradise.” “Therefore,” he concludes, “your life is equivalent to what you carry in it.”⁴²⁰

One’s body is thus a vessel—not a commodity—for an esoteric type of property and capital, acquired and accumulated through good deeds such as charitable actions or even supplication and prayer.⁴²¹ Although Fadlallah’s spiritual capital is immeasurable, it is nevertheless an important component of life on Earth and in Paradise. The implication is: like Khomeini’s politics of messianic time, the esoteric component of one’s life on Earth is limited by time, enables freedom of action, and endows life with meaning. While material capital limits action and free will because it binds one to a state or territory, as in the case with the besieged population of al-Nab’a or the Islamic Republic’s citizens, Fadlallah’s spiritual capital and property appear to enable a different kind of freedom than that of Khomeini’s esoteric politics. Fadlallah cites Imām ‘Alī bin Ḥusayn, the fourth imam’s supplication to God: “Let me live as long as my life is a free gift in obeying You.”⁴²² More important than freedom of interpretation, Fadlallah implored believers to savour the freedom to choose between “good” and “bad”—to understand that the boundaries between the material and spiritual worlds actually facilitate this freedom. As such, spiritual capital allows for believers to stake an interest in an alternative set of exchanges outside of the political and material life of a state.

Fadlallah therefore provided a degree of freedom in earthly existence enabled by a theoretical life in which choice affects a truer, nobler life—the afterlife. One

⁴²⁰ Muhammad Husayn Fadlallah, “Your Life is Your Capital and Your Only Real Investment,” tr., Ghassan Rimlawi, *Bayynat* (15 March 2015). URL: http://english.bayynat.org.lb/Miscellaneous/Miscellaneous_LifeCapital.htm#.WYivV_oqQzeR.

⁴²¹ Ibid.

⁴²² Ibid.

theoretically has the liberty to choose “good” or “bad” choices that are unbound by an earthly political authority. Freedom is thus reserved for those believers who might read Fadlallah's advice and make “good” decisions in this life; and these decisions are to be judged by God alone. Consequently, Fadlallah’s conflict was with how to create not a perfect community but instead one that exists in ethical harmony, through duties and obligations outside of a state. He was interested in how ethical principles based on divine law might be fulfilled without a formal political power, which indeed was mostly absent in Lebanon.

For Khomeini on the other hand, esoteric politics provided a kind of freedom that is reserved only for those jurists who mediate between earthly and divine law, and who have monopolised the ability to interpret and execute divine law. For in order to maintain their authority, these jurists must apply an earthly law that is at once beneficial to the state and ensures communal cohesion in citizenship through esoteric principles.

Conclusion

That Fadlallah and Khomeini proposed different answers to Agamben’s problem reflects not only the global significance of his question but also Islam’s ability to grapple with the political-theological in a way that Agamben had overlooked. While Agamben was a philosopher, both ayatullahs were religio-political authorities primarily concerned with creating or reforming a political community. This chapter showed how they maintained a sphere of political freedom by protecting the mysteries of God’s will. This protection illustrates and allows for a more-nuanced application for *maṣlaḥa* and *ḥisba*, unrestricted by certain aspects of tradition or scrutiny, for law and society.

Rather than reducing religion and politics' messianic qualities, they co-opted these qualities to resolve what seemed to be a conflict inherent in all revealed religions: the conflict between the spiritual and worldly aspects of messianism with politics and law. While Agamben and Strauss attempted to bring rational philosophy into the fold in order to keep the Messiah's hidden qualities at bay in the political world, embracing messianism and rejecting rational philosophy, not vice versa, proved to be the solution for Fadlallah and Khomeini.

For both, the concept of property was one way to reconcile esoteric politics and divine law with the material world; this reconciliation allowed them to link divine law to political interest. Fadlallah and Khomeini used those hidden, esoteric qualities of messianism to ground their political and social agenda within a global understanding of exchanges. Ironically, in inserting spiritual meaning into material capital and property, they also opened up a temporal world—one which Iqbal partially theorised—resulting in a new set of questions regarding public and private space during a period of messianic anticipation, as well as this anticipatory condition's relationship to state law versus communal duty.

In particular, Khomeini opened up a temporal and anticipatory realm with an Islamic Republic, eventually instituting *maṣlaḥa* whereby the mechanism of sovereignty in the post-1988 Islamic Republic no longer “borders on the sphere of life”—on the periphery—but becomes “indistinguishable from it”; life is, in other words, purely political (it is a manifestation of sovereignty). Fadlallah, on the other hand, transcended the boundaries of a purely political life based on material

distinctions to pursue the freedom found in another kind of sovereignty.⁴²³ His sovereignty was a communal kind, and perhaps in anticipation not of an impending government but of an afterlife in which an ideal form of ethics is fulfilled by each believer. Both Khomeini and Fadlallah nevertheless depended on *hisba* and *maṣlaḥa* to establish the contours of material and political interest through esoteric qualities revealed in messianism. But what is the implication of these ideas for a state or community's citizenry? How do members of their respective political communities operate in the spaces established by these two thinkers? And what are the obligations delegated to these members? Such will be the subject of the next chapter.

⁴²³ I have borrowed this from Eric L. Santner, *On the Psychotheology of Everyday Life: Reflections on Freud and Rosenzweig* (Chicago: The University of Chicago Press, 2001), 30.

Chapter Three: *Hisba* and *Maṣlaḥa* Author Gender

This chapter discusses the ways in which family and gender relations are essential for maximising *maṣlaḥa* and formulating an argument for good governance. The argument in this chapter follows from the two previous ones by showing how Fadlallah and Khomeini expressed their ideas on women most prominently through references to *maṣlaḥa* and *ḥisba*. In particular, expressing the politics of gender through these concepts enabled Khomeini and Fadlallah to depart from tradition with *maṣlaḥa*, while grounding their opinions in tradition with commanding right and forbidding wrong. Doing so, they formulated new roles for all members of their political communities and appealed to segments of their communities that had previously been marginalised. These new roles for women and men in reform and revolution had implications for political language in the public sphere, as well as for how a state and society might be conceived.

In this chapter, I examine how Fadlallah restructured debates within the *marja' iyya* on family, in general, and women's relationship to men and politics in particular. He did so by authoring *maṣlaḥa* with *ḥisba* against Khomeini's sharp divisions of public and private in which he not only islamised the public sphere—illustrated in the previous chapter—but also strictly defined gender roles. To be sure, gender is crucial in the history of commanding right and forbidding wrong, used at different moments to bolster or challenge the tradition of men and women's duties to one another and to their community. While there are few historical precedents for women to participate in commanding and forbidding,⁴²⁴ and their participation in the

⁴²⁴ Cook, *Command Right and Forbidding Wrong*, 82.

modern period remains limited by men in authority,⁴²⁵ Fadlallah and Khomeini proposed radical re-imaginings of gender in modern Islamic thought through communal duties promoted by legal discourse.

For example, Fadlallah granted men and women equal legal (*shar'*) responsibility to command right and forbid wrong of one another and did not obligate women to any duty in the home without compensation (*ujra*; lit. rent). Khomeini, on the other hand, declared them equal participants in national defence, with different responsibilities, while legislating according to duties not previously required by the *sharī'a* or the Islamic Republic's laws. These responsibilities were often justified with *maṣlaḥa*, which, while dependent to an extent on the ethics of commanding and forbidding, is a term seldom used by authorities to maintain tradition, more often serving as a means to reimagine these responsibilities and broaden the various duties that women and men might have in society and politics. In other words, the obligations men and women require of one another are part of a larger tension in conversations about the ethical governance of a community.

Fadlallah and Khomeini's approach to gender underwent a turning point during the post-revolutionary period. Fadlallah's most profound judgements on gender came after Khomeini's death and the end of the Lebanese Civil War in 1989, and, while Khomeini's major judgements can be traced to his *Vilāyat-i faqīh*, they took political form only after the Revolution's success. But before providing a background on Fadlallah and Khomeini's pre-revolutionary positions on gender,

⁴²⁵ Ibid., 519 and 521.

further context is necessary on gender's global political evolution during the second half of the twentieth century.

The transformation of global politics during the latter half of the twentieth century, particularly during the 1960s and 1970s, effected new discourses not only on gender but also on other non-class-based identities such as race, religion, and sexuality. After the 1960s, "studies" disciplines emerged from post-colonial studies in American and Western European academe. These newly emergent disciplines critically re-examined social constructs such as gender, race, and religion, which many scholars argued should be studied independently and just as seriously as class conflict espoused by Marxist scholarship. Some scholars have recognised the global nature of a shifting gender discourse which affected politics outside of the liberal Western academy during this period.⁴²⁶ This is not to argue that these critiques took the same form or lexicon in all locales, but instead that a desire to break away from dominating discussions of society and politics, which were previously constrained by Marxist and modernist distinctions, was precipitated by the so-called "crisis of Marxism" in Eastern and Western Europe—and in America as well.⁴²⁷

⁴²⁶ Rola El-Husseini, "Women, Work, and Political Participation in Lebanese Shia Contemporary Thought: The Writings of Ayatollahs Fadlallah and Shams al-Din," *Comparative Studies of South Asia, Africa and the Middle East* 28, no. 2 (2008): 273-282, at 273; Nayareh Tohidi, "International Connections of the Iranian Women's Movement," in *Iran and the Surrounding World: Interactions in Culture and Cultural Politics*, eds., Nikki R. Keddie and Rudi Matthee (Seattle and London: University of Washington Press, 2002), 205-231; Kamran Scot Aghaie, *The Martyrs of Karbala: Shi'i Symbols and Rituals in Modern Iran* (Seattle: University of Washington Press, 2004), 113.

⁴²⁷ Philip S. Gorski, "The Return of the Repressed: Religion and the Political Unconsciousness of Historical Sociology," in *Rendering Modernity: Politics, History, and Sociology*, ed., Julia Adams (Durham, NC: Duke University Press, 2004), 161-189, at 161.

Although this chapter avoids an in-depth discussion of such global developments, I address this to note two interlaced historical events: the significant global changes in approaching gender addressed above, on the one hand, and, on the other, Fadlallah's migration in 1966 to Lebanon from Iraq where Marxism had an exceptionally strong ideological foothold and from where Khomeini was beginning to theorise his future *Vilāyat-i faqīh*.⁴²⁸ To be sure, Fadlallah and Khomeini's political thought was shaped in part by what they perceived as a Marxist threat and European intervention (both ideological and material), their response to which sometimes involved an invocation of gender as a paradigmatic ethical and cultural category. Thus, as this chapter's background discussion will show, their ideas on gender were fashioned by these global changes just as much as they were by domestic or more "Islamic" considerations.

In the wake of post-colonial studies' growing popularity, particularly in the West, scholarship concerned with Muslim women has often attempted either to recover a lost agency or to reclaim ownership of historical sources and events. Other scholars attempt to defend Muslim women with the same secular rhetoric that women in the Islamic world frequently oppose.⁴²⁹ This chapter does neither. I also avoid

⁴²⁸ Khomeini was critical of Marxist opposition groups and the shah's repression of them, but most of his ire would shift from the shah toward Marxism after the revolution's success.

⁴²⁹ Janet Afary admits, on the one hand, to the lack of historical documents related to gender in her field and the need to reread existing documents to compensate for this lack, as well as to resist the Islamic Republic. On the other hand, on the inside cover of her book, *Sexual Politics in Modern Iran*, she notes "a wealth of historical documents, form the kernel of this book, which charts the history of gender and sexuality in Iran from the nineteenth century to today. What comes across is the extraordinary resilience of the Iranian people, who have drawn on a rich social and cultural heritage to defy the repression and hardship of the Islamist state and its predecessors." See Janet Afary, *Sexual Politics in Modern Iran* (Cambridge: Cambridge University Press, 2000), 1; Both Afary and Parvin Paidar, differences

embarking on the methodologically problematic yet admirable endeavour of accommodating “feminisms” in their myriad manifestations in order to expose misconceptions about gender in the Middle East.⁴³⁰ Instead, I consider the rhetoric concerning women as no more than a means to assert authority over a large swath of the public, that is, women, in order to galvanise them to participate in the construction and defence of a community.

This initiative for authority and popular mobilisation in Iran was undeniably also an attempt to mitigate women’s discontent with legal practices that traditionally subordinated them to men. The language of legal theory in the modern period, as Ziba Mir-Hosseini argues, has in fact been used to expand certain “rights” of women—as, for example, in divorce—where traditional jurisprudence has limited them.⁴³¹ This also holds true in Fadlallah’s Lebanon where he used jurisprudence to expand women’s roles in the public and private spheres to maintain his community’s strength

notwithstanding, both of whose works contain valuable research, address an attempt to identify and reconcile inadequacies of scholarship on gender in the field of Middle Eastern studies. See Parvin Paidar, *Women and the Political Process in Twentieth-Century Iran* (Cambridge: Cambridge University Press, 1995), 1-8; On the issue of “saving” Muslim women, see Lila Abu-Lughod, “Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others,” *American Anthropologist* 104, no. 3 (2002): 783-790.

⁴³⁰ “I will use the simple and broad framework of ‘aiming to increase women’s rights, opportunities and choices within any ideology or context’ as my definition of the term feminism in this book, and describe a wide variety of women’s activities in this direction in twentieth-century Iran as feminist activism. This broad definition of the term ‘feminism’ will accommodate many feminisms in many political or ideological frameworks in this book. The different feminisms that I will refer to include Western feminism, Middle Eastern feminism, Iranian feminism, radical feminism, socialist feminism, secular feminism, Islamic feminism, and so on.” Paidar, *Women and the Political Process*, xi.

⁴³¹ See Ziba Mir-Hosseini, “The Politics of Divorce Laws in Iran: Ideology versus Practice,” in *Interpreting Divorce Laws in Islam*, eds., Rubya Mehdi, Werner Menski, and Jørgen Nielsen (Copenhagen: DJØF Publishing, 2012), 65-83; Ziba Mir-Hosseini, “When a Woman’s Hurt Becomes an Injury: ‘Hardship’ as Grounds for Divorce in Iran,” *Hawwa: Journal of Women in the Middle East and the Islamic World* 5, no. 1 (2007): 111-26.

against sectarian conflicts and in social politics where the Lebanese government was relatively powerless. The rhetoric used, however legalistic, is often anchored to considerations of ethics and politics—or to the duties men and women require of one another and their communities. And this rhetoric often addresses the effect of these duties on a larger political world.

Fadlallah and Khomeini’s authority was indisputably patriarchal but women influenced the former pair’s ideas and political realities. While Khomeini and Fadlallah were authoring their theories of sovereignty and continually forming and modeling their own ideas, women were carving out social and political spaces to respond to these theories. Curiously, however, despite what many describe as Fadlallah’s more “liberal” stance on women—especially compared to Khomeini—there are no *mujtahidāt* in Lebanon as far as this author is aware. Zuhra Şifātī (b. 1948), however, remains a relatively well-known and authoritative *mujtahida* in Iran. This is not to suggest that Shi‘i women in Lebanon do not engage in their own ways of carving out spaces of authority; Deeb convincingly illustrates that they do.⁴³² I propose instead that their authority is unaccepted by the highest levels of jurisprudence, that is, they cannot become, for whatever reason, *mujtahidāt*.

Although some might argue that barriers to women attaining the level of *mujtahida* is due to economic inequalities, governance (or lack thereof), education, or legal constraints—which no doubt is true—I hope to present a more nuanced argument in this chapter: that is, with his rulings on gender and despite his monopoly on all final political judgements in the Islamic Republic, Khomeini opened up a

⁴³² See Deeb, *An Enchanted Modern*.

sovereign space in which authority has more than one form. Fadlallah, on the other hand, endeavoured to endow women with equity in order to equalise the social and—perhaps ideally—political playing field between men and women. Thus, despite his unsuccessful sanctioning of women’s use of *ijtihād*, this judgement was in his mind a necessary one in conjunction with his more social and capital-“ist” judgements.

I should reiterate that this project is one on sovereignty and authority, and thus focuses on two competing theoreticians with global influence. Addressing how female religious authorities compare to one another is undoubtedly an important endeavour, as Mirjam Künkler and Roja Fazaeli have shown,⁴³³ but it is beyond the scope of this chapter. In other words, rather than analysing how certain women establish political or theological norms in their own centres, or gender from the perspective of feminist theory, post-colonial studies, or Marxism, I attempt instead to view gender from a politico-theological perspective in which it functions as an important—perhaps the most important—building block of sovereign-religious and governing authority in the modern period.

My argument departs from Ziba Mir-Hosseini who contends that debates on sovereignty—which pit civil society against Islamic society or Republicanism against Islamism—are reflected in public discussions on gender. I argue instead that global discussions of governing and legislating on gender are themselves paradigmatic

⁴³³ Mirjam Künkler and Roja Fazaeli, “The Life of Two Mujtahidahs: Female Religious Authority in Twentieth-Century Iran,” in *Women, Leadership, and Mosques: Changes in Contemporary Islamic Authority*, eds., Masooda Bano and Hilary Kalmbach, in *Women and Gender: The Middle East and the Islamic World* vol.2, eds., Margot Badran and Valentine Moghadam (Leiden and Boston: Brill, 2012), 127-160.

arguments where legal ethics and politics intersect to construct sovereignties.⁴³⁴ More specifically, gender as the site of *ḥisba* and *maṣlaḥa*'s clearest implementations indicates that women reflect a building block for sovereignty in Islamic thought.

The role of women in political discourse, not necessarily actual political life per se, occupies an equally important and sometimes precarious role as does the military or the youth, a distinction most apparent in Khomeini's "Last Will and Testament" where he addressed all of the above categories as key stakeholders in the Islamic Republic's future.⁴³⁵ As will be shown, Fadlallah and Khomeini differed on women's positions vis-à-vis men but both expanded women's social and legal standing, particularly after the Revolution and the Lebanese Civil War respectively. Khomeini's Islamisation of gender through mandatory veiling and allegories of important women in early Shi'ism, Fāṭima and Zaynab as examples, subordinated women to men while paradoxically establishing new duties by which they became co-dependent partners in politics.

⁴³⁴ See Ziba Mir-Hosseini, "Debating Women: Gender and the Public Sphere in Post-Revolutionary Iran," in *Civil Society in Comparative Muslim Contexts*, ed., Aryn Sajoo (London: I.B Tauris & Institute of Ismaili Studies, 2002), 95-122; The only other work, of which I am aware, that draws an explicit connection between gender and sovereignty is John Hoffman, *Gender and Sovereignty: Feminism, the State and International Relations* (New York: Palgrave, 2001). Hoffman presents a significantly different approach to gender and sovereignty in his work in which he argues, "to study the question of gender and sovereignty is to be concerned with the problem of emancipation, but the emancipation of a particular group" (i.e., women), requiring "[us] to reclaim sovereignty" by examining "the barriers which states pose to freedom," one of which is "patriarchy." Doing so, he continues, is only possible if the state is "detached from static, timeless ideals which bring history and progress to a full stop." Hoffman, *Gender and Sovereignty*, 4-6.

⁴³⁵ Imam Khomeini, "The Prologue to Imam Khomeini's Last Will and Testament." *Al-sirāj*. URL: <http://www.alseraj.net/maktaba/kotob/english/Miscellaneousbooks/LastwilofImamKhomeini/occasion/ertehal/english/will/Imnew1.htm>.

Though previously opposed to women's participation in political life—as most of the contemporary *'ulamā'* were—Khomeini by the late 1970s and early 1980s strove to incorporate previously marginalised women into a revolutionary society by endorsing certain legal rights as well as their proactive yet limited responsibility in politics and society. This limit, however, was often unclear, for example in his non-gendered interpretation of Q.9.71,⁴³⁶ in which he called on all Iranians to fulfil their revolutionary obligations side by side.⁴³⁷ Nevertheless, a public sphere within Khomeini's newly established political arena, in which both a gendered and revolutionary lexicon existed, also provided women with a weapon through which they promoted and debated their interests based on diverse understandings of their duties. The expanded legal and social realm further allowed him to control public space by garnering their support, a dynamic still contested today through discussions on Khomeini's legacy.

On the other hand, Fadlallah constituted men and women as wholly complimentary agents in the pursuit of a common good. He mobilised Qur'ānic injunctions and, like Khomeini, emphasised myths regarding women in early Shi'i history. Fadlallah subordinated scholarly consensus with what appears on the surface as a rhetoric of gender that is more concerned with immediate social responsibilities versus Khomeini's overt presentation of Shi'i history as a tool for unity and women's revolutionary mobilisation. Despite what first appears as less overtly Islamised rhetoric, Fadlallah never conceived of a secularised public sphere in which religion is

⁴³⁶ “The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise.”

⁴³⁷ Khomeini, *Islam and Revolution*, 109.

consigned to private life. Indeed, as Stephan Rosiny has argued, he distanced himself from Shi‘i hagiography, most notably with a re-interpretation of the events surrounding Fāṭima al-Zahrā’s death. Unsurprisingly, this revisionist approach elicited ire from some of his peers and opponents alike while providing a new myth—against previous narratives—for diverse groups of women and men.⁴³⁸

For instance, while his teacher, Ayatullah al-Khū’ī, maintained scholarly consensus, Fadlallah emphasised women’s participation in providing a common good by writing against tradition and consensus through the ethics of *ḥisba*. Where al-Khū’ī used the Qur’ān and Sunna to prohibit women from entering positions of public authority, in parliament for example, or from participating in these institutions, Fadlallah completely sanctioned these activities in part by referring to the Queen of Saba and passages in the Qur’ān that emphasised the equal responsibility of men and women to command and forbid.⁴³⁹ Similarly, Khomeini implored women to participate in revolution and politics alongside men. Fadlallah and Khomeini thus viewed women, however differently, as an important demographic in their political communities. For both, gender was a means of promoting a common good through which tradition and consensus are subordinated.

Historical Background on Fadlallah and Khomeini’s Positions on Women

⁴³⁸ Rosiny, “The Tragedy of Fatima Al-Zahrā” in the Debate of Two Shiite Theologians in Lebanon,” 207-219.

⁴³⁹ Abū al-Qāsim al-Khū’ī, “Aḥkām al-mar’a al-khāṣṣa.” URL: <http://www.al-khoei.us/fatawa1/index.php?id=2301>; Where Khū’ī disallows for this kind of participation, Fadlallah has cited a Qur’ānic verse, referring to men and women as guides to each other in public expressions of *ḥisba* while using the Queen of Saba as a model for women in political office (as discussed in Chapter One of this study and to be addressed in greater depth in the present chapter). See Faḍlallah, *Ta’āmmulāt*, 9-10 and 23-24.

But in which specific ways are family and gender related to a common good, and further related to sovereignty? Vanessa Martin argues that according to Islamic philosophy, “which derived from the Greeks, man can only attain felicity and flourish to the fullest extent in a community in which full cooperation in pursuit of the common good exists,” a pursuit which she attributes in part to Aristotle’s *Ethics*.⁴⁴⁰ In the first two chapters, the relationship between ethics and politics was explored. But if this relationship is as important as it appears, then we must also take into account Aristotle’s volume on *Politics* in which he constitutes the family as the smallest political unit reflected in the power dynamics between men and women.⁴⁴¹ Consequently, the relationship of ethics and politics to family and gender, and the resulting implications for a political community’s sovereignty might be revealed. This relationship and its implications are a primary concern of this chapter.

Although a reference to Aristotle might seem misplaced both chronologically and substantively, discussing his thought is instructive for two reasons. First, it provides a lens through which history is interpreted in global political thought because his influence is found across cultures, continents, and religions. Second, his work also provides a political as opposed to scientific framework for gender relations, which sometimes bears parallels with Fadlallah and Khomeini’s ideas on the ethics and politics of gender. This claim should be unsurprising because it is well known

⁴⁴⁰ Martin, *Creating an Islamic State*, 34-35.

⁴⁴¹ Aristotle, “Politics,” in *The Complete Works of Aristotle*, vol. 2, bk. 1, ch. 1 and 3, tr., Benjamin Jowett, ed., Jonathan Barnes (Princeton: Princeton University Press, 1984). Although my reference to Aristotle might seem misplaced, both Khomeini and Fadlallah were well schooled in the thought of Aristotle and other early Greek philosophers as essential to seminary education in Najaf and Qom. For more on Aristotle as an influence on Khomeini, see Alexander Knysh, “‘Irfan’ Revisited: Khomeini and the Legacy of Islamic Mystical Philosophy,” *Middle East Journal* 46, no. 4 (1992): 631-653, esp., 638.

that medieval Muslim scholars responded to various Greek philosophers, particularly Aristotle and Plato, the reception of which profoundly influenced, and continues to influence, Shi‘i seminary curricula in which the most learned Shi‘i scholars study.⁴⁴²

This chapter will make clear that in Fadlallah and Khomeini’s arguments, as in Aristotle’s, biological differences between men and women play no role.⁴⁴³ If there is biological significance, it is completely subordinated to history and politics. The position that women’s psychological condition in which emotions are prevalent indicates a “lack of complete rationality, but not complete lack of rationality”—along the lines of al-Khūy‘ī’s reasoning—is also unconvincing because it does not account for Aristotle’s complete exclusion of women from the public sphere.⁴⁴⁴ Aristotle’s argument is instead predicated on history and teleology, that is, natural associations—beginning with the family—that lead to the common pursuit of the good life, which can be attained only in a community (the *polis*).⁴⁴⁵ Although this approach to gender might appear as restrictive or reductive as arguments based on biological and psychological inequalities, Aristotle’s method is not scientific but instead political.

⁴⁴² Robert Gleave contends that the philosophy curriculum in the Qom seminary, which is “usually based around the Islamicised version of the Greek tradition, was used as a vehicle for political theory.” See Robert Gleave, “How to Train a Mulla: Seminaries in Shi‘ite Islam,” *British Academy Review* 19 (January 2012), 7. URL: <https://www.britac.ac.uk/sites/default/files/BAR19-02-Gleave.pdf>; The conservative ayatullah, Muḥammad Taqī Miṣbāḥ-Yazdī, has given lectures addressing ancient Greek philosophy as received by Islamic scholars. These can be found in their English translation in Mesbah Yazdī, *Philosophical Instructions: An Introduction to Contemporary Islamic Philosophy*, trans. N.a. (N.a.: Global Publications, 2000); Additionally, the role and influence of ancient Greek philosophy in contemporary Islamic thought and scholarship is still recognised among the Shi‘i public online. A short debate and discussion emblematic of this topic’s importance can be found here: <http://www.shiachat.com/forum/topic/235013079-hawza-lectures-on-plato-aristotle-and-others/>.

⁴⁴³ Thanassis Samaras, “Aristotle on Gender in *Politics* I,” *History of Political Thought* 84, no. 4 (2016): 595-605, at 597.

⁴⁴⁴ *Ibid.*, 599-600.

⁴⁴⁵ *Ibid.*, 600-601.

This method allows for different formulations of how gender affects community and in what capacity it might, or might not, bolster ideas of governance. Thus, while both Fadlallah and Khomeini instrumentalised family and gender relations to maximise what they believed to be the common good, Fadlallah avoided Khomeini's all-encompassing Islamic discourse to resonate with, and lead, a diverse Lebanese community for whom Shi'i revolutionary discourse had long been a divisive force.

Fadlallah's agenda, and Khomeini's for that matter, displays the marriage of ethics and politics without clear boundaries between the two. In Book 1 of his *Politics*, Aristotle claims, "every community is established with a view to some good; for mankind always act [sic] in order to obtain that which they think good." Indeed, for Aristotle, every state is a community, which is "made up of households" that require management. He explains in Book 3, "the parts of household management correspond to the persons who compose the household... and the first and fewest possible parts of a family are master and slave, husband and wife, father and children..."⁴⁴⁶ By establishing the household as the source for pursuing a common good within a community, Aristotle assigns utmost importance to the relationship between men and women. It is this relationship on which a community's common good depends.

Fadlallah and Khomeini obviously differed from Aristotle in many ways. For one, Fadlallah defined the family in terms of complimentary roles in which men and women have equal responsibility in pursuing a common good. Inequality is not *necessarily* a given, nor particularly important for Fadlallah. Although he was aware

⁴⁴⁶ Aristotle, "Politics."

of differences between the sexes,⁴⁴⁷ and used certain labels—as for example, “householder” and “housewife”⁴⁴⁸—he was concerned more with the way by which a community functioned cooperatively to achieve a goal, as well as preventing evil and corruption.⁴⁴⁹ He subsumed women’s commitment to a common good in commanding and forbidding thereby authoring his agenda with a divine injunction. However, Aristotle deemed inequality within a household a necessity through which a larger community could define itself. In other words, identity was premised on difference. Nevertheless, the similarity between the two is that Fadlallah, like Aristotle, identified man and woman as the most basic political unit through which a political community is constituted.⁴⁵⁰ And they both understood the importance of the family, particularly the role of women, in pursuing a common good as an ethical virtue.

This argument does not necessitate “Aristotelian virtues”⁴⁵¹ as a source for Fadlallah’s concept of *maṣlaḥa* and women in the public sphere. While he framed his

⁴⁴⁷ Sayyed Muhammad Hussein Fadlallah, “Equality between men and women in theory and practice (part 1),” tr., Bayynat editor, *Bayynat* (2014). URL: http://english.bayynat.org/Women/Women_EqualityMenWomen.htm#.VQosOUY7XOS.

⁴⁴⁸ Fadlallah, *Ta’āmmulāt*, 23.

⁴⁴⁹ Examples abound in Sayyed Muhammad Hussein Fadlallah, “The status of the woman in the Quran.”

⁴⁵⁰ Fadlallah’s contemporary and predecessor, Mūsā al-Ṣadr, who was arguably the most politically active *mujtahid* in Lebanon, held a similar view. In al-Ṣadr’s speech from 1971, he also recognised that the family is the basic unit of society, but first and foremost because a love for God emanates from familial relationships. “In the opinion of some researchers,” he says, “society in the eyes of Islam consists of units, and each unit is the family, not the individual... In fact, the position of the family and its impact on society in the view of Islam is very great even for those who do not adhere to this view, and there is enough proof of this in the Hadith: ‘That which is built in Islam builds a love of God from the soul.’” Mūsā al-Ṣadr, “Al-Islām wa-l-usra fī mujtama‘ mutaṭawwar,” in *Mūsā al-Ṣadr wa-l-khiṭāb al-insānī: muḥādirāt wa-l-abḥāth li-l-Imām al-Sayyid Mūsā al-Ṣadr* (N.p.: Markaz al-Imām Mūsā al-Ṣadr li-l-abḥāth wa-l-dirāsāt, 2009).

⁴⁵¹ Zaman refers to Calhoun, who asserts “that the common good cannot be seen ‘ahistorically in substantive terms—for example, as rooted in communities that

designation of men and women in the context of commanding right, his ethics cannot be defined as anything other than contingent on his community's composition and interest. Despite Aziz's contention that Fadlallah believed Islamic law had been corrupted by Greek philosophy,⁴⁵² chapter two addressed Fadlallah and Khomeini's opposition to materialism in Epicureanism, not to the entirety of Greek philosophy. The above reveals the congruence between Aristotle and Fadlallah in acknowledging the importance of women in the public sphere, and thus the greater political community, while simultaneously using this issue as a political trope. In other words, as will become clear, historicising women's subservient role to men politicises this relationship. This is why one finds women as a trope for moderation, alongside wine and temperament, to promote good governance as early as the eleventh century in Islamic mirrors for princes, many of which also drew heavily on various iterations of Aristotle's writings.⁴⁵³

In the 1940s, Khomeini's approach to gender in his *Kashf al-asrār* was fashioned by what he viewed as the shah's immoderate policies. Khomeini's discussions on gender were chiefly concerned with men and women's ethical roles and a critique of how the shah's politics affected these roles. For Khomeini, women are integral in maintaining the ethical-social fabric of society, and thus in maintaining his authority over these ethics. But when he discusses women in this work, these discussions are mostly a criticism of the shah's policies, which he argues weakened

always already exist or in Aristotelian virtues.” See Muhammad Qasim Zaman, “The ‘Ulama of Contemporary Islam,” 130.

⁴⁵² Aziz, “Fadlallah and the Remaking of the Marja‘iya,” 212.

⁴⁵³ See Nequín Yavari, “Polysemous Texts and Reductionist Readings: Women and Heresy in the *Siyar al-Muluk*,” in *Views From the Edge: Essays in Honor of Richard W. Bulliet*, eds., Nequín Yavari, Lawrence G. Potter, Jean-Marc Ran Oppenheim (New York: Columbia University Press, 2004), 322-346.

Iran's political and ethical integrity. On the one hand, for example, Khomeini accuses the shah of attempting to implement modernising policies due to pressure from western governments, further allowing the exploitation and "infiltration" of Iran by imperial powers. On the other hand, according to Khomeini, the shah also destroyed the fabric of Iranian society by "silencing clerics," allowing "instruments of hedonism" along with "forced unveiling." All of these "tricks", Khomeini says, are to "deceive" and inhibit the "progress of the country and the basis of life."⁴⁵⁴ Of the shah's measures during this period were his legal reforms, many of which marginalised the clergy's authority over jurisprudence, particularly with the introduction of the family law in the early 1930s.⁴⁵⁵ The effect, for Khomeini, was the corruption of law as an expression of material and spiritual life.⁴⁵⁶ Khomeini's views on women at this time are thus related neither to his personal position on women nor on their status in the *sharī'a*, despite what some scholars claim.⁴⁵⁷ Khomeini instead focused on a community's ability to govern itself independently, an independence based heavily on ethical and political integrity.

This is not to argue that Khomeini's work should be classified as advice literature—as mirrors for princes per se—but that the tropes involving women, wine, and other vices have a history in political treatises and should be understood as such. In fact, Khomeini wrote his *Kashf* partially in response to the secular politics found in 'Alī Akbar Ḥakamīzāda's (d. 1987) *Asrār-i hizār sāla*, also published in 1943, and as an attack on the latter's mentor, Aḥmad Kasravī (d. 1946). Assassinated in 1946 by a

⁴⁵⁴ Khumaynī, *Kashf*, 331.

⁴⁵⁵ Mir-Hosseini, "The Politics of Divorce Laws in Iran," 67-68.

⁴⁵⁶ See chapter two of this work.

⁴⁵⁷ Parvin Paidar has attributed to Khomeini a quote which does not exist, supposedly found in his *Kashf al-asrār* on page 314. Paidar, *Women and the Political Process*, 121.

member of the *Fidāyān-i Islām*, Kasravī, a staunch positivist, polemicised against all forms of religiosity, particularly Sufism and Shi‘i clerics and rituals. Although Kasravī might be placed within the history of Iranian secular nationalist discourse inherited from the likes of Mīrzā Fath-‘Alī Akhūndzāda (d. 1878)⁴⁵⁸ and Mīrzā Aghā Khān Kirmānī (d. 1896),⁴⁵⁹ both of whom also advocated language reform,⁴⁶⁰ Kasravī’s audience consisted mostly of young Muslims who were disillusioned with ineffectual Shi‘i politics yet unwilling at the time to join the socialist Tudeh Party, though some would later do so.⁴⁶¹ In any case, modern-third-world nationalism as a global phenomenon depended on reforms that involved the marginalisation of religion from the public sphere and reimagining the nation-state as a cohesive linguistic, ethnic, and historical group. Khomeini’s attack on the shah and Atatürk was, in essence, an attack on these ideas.⁴⁶²

Khomeini’s politics of gender sharpened during the 1960s when he endeavoured to mobilise the public against the shah’s White Revolution. As the previous chapter explained, the White Revolution has its antecedents in the early 1940s after Rizā Shah abdicated in 1941 at the behest of allied forces because of his Nazi sympathies. The post-Rizā Shah period, between the 1940s and 1950s, underwent an increase in expression among various strata of women reflected by numerous, mostly secular publications and organisations. These ranged from Tudeh

⁴⁵⁸ Hamid Algar, “ĀKŪNDZĀDA,” *Encyclopædia Iranica* vol. 1, Fasc. 7 (Original version published 15 December 1984; Updated 29 July 2011): 735-740. URL:

<http://www.iranicaonline.org/articles/akundzada-playwright>.

⁴⁵⁹ Mangol Bayat, “ĀQĀ KHAN KERMĀNĪ,” *Encyclopaedia Iranica* vol. 2, Fasc. 2 (Originally published 15 December 1986; Updated 5 August 2011): 175-177. URL:

<http://www.iranicaonline.org/articles/aqa-khan-kermani>.

⁴⁶⁰ Lloyd Ridgeon, *Sufi Castigator: Ahmad Kasravi and the Iranian Mystical Tradition* (Oxford and New York: Routledge, 2006), 46.

⁴⁶¹ Ridgeon, *Sufi Castigator*, 25-26.

⁴⁶² Khumaynī, *Kashf*, 331.

Party socialists with the magazine “Bīdārī-yi mā (Our Awakening),” in which they wrote about political, literary, and scientific issues while boasting the slogan “We, too, have rights in this country,” to pro-shah royalists with the magazine “Zabān-i zanān (Women’s Language),” which focused on child rearing, housekeeping, and education only to be shut down after advocating for the end of allied occupation in Iran. In 1942, the Iranian Women’s Party formed, the leader of which lobbied the parliament in 1944 for, among other reforms, women’s enfranchisement, unsuccessfully, and to investigate the treatment of women in prisons on the basis of “equal rights for men and women.”⁴⁶³

As briefly discussed in chapter two, the White Revolution was a watershed for Iranian politics in general and for Khomeini’s politics in particular. Although groups of women had, at least since the Constitutional Revolution, demanded rights such as desegregation of the sexes, unveiling, education, and raising the age of marriage, the White Revolution—as a government-initiated reform movement—implemented these.⁴⁶⁴

The shah’s major reforms included granting voting rights to women, which elicited major protests in Qom, particularly among the clergy.⁴⁶⁵ In a telegram sent to the shah on 15 November 1962, Khomeini—as he had done in the 1940s—decried the shah and his prime minister’s (Asadallah ‘Alam) policies condemning them as

⁴⁶³ Paidar, *Women and the Political Process*, 124-127.

⁴⁶⁴ Stephanie Cronin, “Review of Women and the Political Process in Twentieth-Century Iran,” by Parvin Paidar, *Journal of the Royal Asiatic Society* 6, no. 3 (1996): 438-439.

⁴⁶⁵ Rūhallah al-Mūsavī al-Khumaynī, “Tiligrām-i Imām bi shāh va ‘Alam dar i‘tirāz bi lāyiha-yi anjuman-hā-yi ayālatī va vilāyatī,” Imam Khomeini (5 November 2012). URL: <http://www.imam-khomeini.ir/fa/n3434/>.

internationally inflicted and as an affront to Islam. But this time he also appealed to Iran's 1906 Constitution: "Mr. 'Alam has announced his violation of Islamic law and the Constitution..." Khomeini declared. "This person regards the violation of the Constitution as a pretext for his international obligations, despite the fact that the international requirements are not related to religion and the Constitution." He is instead "committed to international requirements in order to suppress the holy Qur'an and Islam, and the Constitution and the nation."⁴⁶⁶ He later added, "the Shah is fooling the people by announcing 'women's participation in the elections', grant [sic] of voting rights to women or bringing half of the population into the society. These appealing expressions will only bring misfortune, corruption and distress."⁴⁶⁷

Appeals to *maṣlaḥa* and commanding and forbidding are mostly absent from Khomeini's attacks during this era—though they do appear in his *Kashf al-asrār* mostly in sections unrelated to women directly—likely because there was little effort (or authority, at the time) on his part to affect Islamic jurisprudence. Instead, he appealed to an earlier Iranian Constitution, which he would later critique in his *Vilāyat-i faqīh* for its absence of sufficient Islamic principles also due, in part, to international interference. His engagement with international norms of law and sovereignty, beyond a myopic criticism of monarchy and oppression, indicate not only that he was very much a product of global debates on legislation but also that he opposed, above all, the social and legal subordination of those who benefited least from the shah's policies (like the 'ulamā' and pious Muslims) instead of broad and

⁴⁶⁶ Khumaynī, *Ṣaḥīfā-yi Imām* vol. 1, 88. URL:

<http://farsi.rouhollah.ir/library/sahifeh?volume=1&tid=64>

⁴⁶⁷ Azadeh Kian, "Gendered Khomeini," in *A Critical Introduction to Khomeini*, 170-192, 172.

arbitrary opposition to women's greater legal freedoms.⁴⁶⁸ This does not imply that Khomeini believed in equality between the sexes but that he believed gender and politics to be two sides of the same coin. For after the revolution, Khomeini implemented laws, some of which had antecedents in the very laws that the shah imposed.⁴⁶⁹

The trajectory of Fadlallah's thoughts on gender is less clear. Although he addressed the role of women in society and politics for most of his career, he published his first work focused solely on women only after the end of the Lebanese civil war in 1989. Among Fadlallah's earliest references to women can be found in his *Qaḍāyānā 'alā ḍaw' al-Islām*, a collection of his articles for the Da'wa Party journal, *Al-aḍwā'*. As discussed earlier in this study, Fadlallah, like Khomeini, was initially concerned mostly with domestic ethics and how colonial modernity affected these ethics to undermine Muslim legal, political, and social independence. Fadlallah was certainly aware of Khomeini while writing for *Al-aḍwā'*, though there is no record of him having read *Kashf al-asrār*. But, while the latter initially targeted the shah's policies, the former, like his compatriot Muḥammad Bāqir, targeted Communist movements and atheist Ba'thism rather than the Iraqi military dictator, General Qāsim (d. 1963), whom both al-Ṣadr and Fadlallah thought opportunistic and weak but with whom the Da'wa Party nevertheless maintained amicable relations.

⁴⁶⁸ After his exile, Khomeini became more explicitly antagonistic toward the shah's policies: "The sinister and bloody revolution, with the expression 'white', that took place in a day with tanks and machine guns [against] fifteen thousand Muslims, as it is known, made the nation's population darker. It ruined the lives of the peasantry and the captive farmers, and now in many cities and most villages there are no clinics, doctors and drugs; there is no news about school, bathrooms and drinking water, and according to the confession of some of the press, innocent children are hungry in some of the villages ..." Citation from Imām Khumaynī, "Nīṭāyij-i khafat bār inqilāb-i sifid," *Imam-Khomeini*. URL: http://www.imam-khomeini.ir/fa/c78_124110/

⁴⁶⁹ Mir-Hosseini, "The Politics of Divorce Laws in Iran," 66.

In his *Qaḍāyānā*, Fadlallah criticised a “contemporary global reality,” in which the world “began to move away from religion”—both Christianity and Islam—and toward atheism and Communism.⁴⁷⁰ Fadlallah defined this conflict as an “intellectual struggle between Islam and the intellectual and materialistic currents that challenge the concepts of Islam in theology, law, and method.” What he means, in other words, is that political debates have shifted to focus on European “secular” approaches to “freedoms and human rights issues,” especially realated to “women and extremism, and so on.”⁴⁷¹

For Fadlallah, this focus generated an imposition of secular concepts on Islamic ones, resulting in currents of Islamic thought and practice being labelled as democratic or liberal. The effect, he contends, is the subordination of independent Islamic politics, society, and education to secular-liberal distinctions of these categories.⁴⁷² “Perhaps the issue of women's legislation,” Fadlallah argues,

is one of the issues that arose from the subordination of some of the leaders of legislation and governance in our country (Iraq) to a certain influence and a special complex arising from a frenzied campaign aimed at distorting the Islamic legislation in the nation...⁴⁷³

Fadlallah does not appear to be opposed to legislation that grants women greater freedoms, even at this formative stage in his career, but neither does he attempt to expand Islamic jurisprudence for women’s independence; here his critique focused on international juridical hypocrisy.

⁴⁷⁰ Faḍlallah, *Qaḍāyānā ‘alā ḍaw’ al-Islām*, ā-b.

⁴⁷¹ *Ibid.*, j.

⁴⁷² *Ibid.*, j.

⁴⁷³ *Ibid.*, 90-91.

Fadlallah discussed European arguments for legislation on women, pointing to the trend (since the medieval period, he claims) of associating polygamy with harems in the Islamic world. He contended that global social philosophies with a greater concern for familial relations led to an ethical critique of these practices, which then led to the Islamic world's adoption of this critique. Modern European domestic legislation on prostitution, however, never addresses the disregard for "women's sanctity."⁴⁷⁴ This brand of hypocrisy, he notes, is the same as that of Arab leaders who attempt to "imitate" the West without concern for the "Islamic nation."

When Fadlallah migrated from Iraq to al-Nab'a in southern Beirut in 1966, Mūsā al-Ṣadr had already established a presence in other parts of Lebanon. However, there was no local *'ālim* in al-Nab'a who provided guidance until Fadlallah's arrival, an arrival with substantial effects on the neighbourhood's Shi'i youth. He established an "Islamic Institute" to attract these young Shi'is, many of whom attended secular schools and were disillusioned with the political stance of Lebanon's *'ulamā'*.⁴⁷⁵ He also continued his resistance against popular Communist movements in Lebanon.⁴⁷⁶ His public lectures from 1972 were compiled in a later volume titled *Maḥāhīm islāmiyya 'āmma* in which he addressed "the gap between the people and religion" and the "relationship between the *'ulamā'* and the people."⁴⁷⁷

In his lectures in *Maḥāhīm islāmiyya 'āmma*, Fadlallah also invoked legislation (*tashrī'iyya*). But instead of attacking hypocritical legislation, he initiated a

⁴⁷⁴ Ibid., 93-94.

⁴⁷⁵ Sankari, *Fadlallah*, 131.

⁴⁷⁶ Muḥammad Ḥusayn Faḍlallah, *Maḥāhīm islāmiyya 'āmma* (Beirut: Dār al-malāk, 2001), 221.

⁴⁷⁷ Ibid., 11.

predominantly theoretical interpretation of women's duties before and after marriage.

“Does Islam” asked one student, “express an active role for women within the house?

Or does it encourage or prevent her from branching off in a space of activity outside

of the house?” Fadlallah answered:

Islamic law does not give her father or any of her relatives the right to obligate her to housework in any form. She is free in self (*nafshā*) from this perspective, as [she is] in her ability—from the perspective of law—not to serve anyone as well as to demand rent for that in her house or another house... no male or female can prevent another from working outside of the house or imprison them there or own them there.

After marriage, he explains:

Islamic law does not impose housework on women—the wife—[and] it does not obligate her but instead is far from it, expressing that she has the right to breastfeed her child and to nurture it and to take rent for [this work] and her husband does not have the right to prevent her from [rent].⁴⁷⁸

While in the early 1970s, Fadlallah believed traditional gender roles to be the most-noble roles, the above judgements were still not generally accepted by the majority of ‘*ulamā*’ at the time; he even adds, “this situation includes all married life.”⁴⁷⁹ As chapter two argued, political interest depends on certain manifestations of property and capital, an argument exemplified by Fadlallah’s above answer to his student. But where the previous chapter focused on political interest expressed in spiritual and material capital, here Fadlallah promotes a woman’s specific right to equity so as to endow her with interest, however theoretical, where it was previously absent. He thus asserted a right to material benefit and “movements” outside of the

⁴⁷⁸ Ibid., 47-48. Fadlallah supported these judgements with a reference to Q.65:6: “Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way; but if you are in discord, then there may breastfeed for the father another woman.” Fadlallah also says that his primary methodology for deriving judgement is based on the Qur’ān, Ibid., 12.

⁴⁷⁹ Ibid., 48.

home in order to create private and social interest, undoubtedly as part of his program to close the social gap between the *'ulamā'* and their followers—male and female.

An opponent to the formation of the Supreme Islamic Shi'i Council headed in the early 1970s by Mūsā al-Ṣadr to unite the disenfranchised Shi'i of Lebanon under one party, Fadlallah found in his lectures a space of opposition to the Council without forthright denunciation, as both al-Ṣadr and Fadlallah were concerned with the same issues plaguing the Lebanese Shi'i community.⁴⁸⁰ In his *Lectures on Humanity*, al-Ṣadr attested to the insufficiency of the material (i.e., “material tender,” meaning, as he defined it, the basis for society's composition which also limits motivation beyond material acquisition). On the other hand, family life for al-Ṣadr provides a basis for spiritual life, allowing for more meaningful interactions between members of society.⁴⁸¹ Al-Ṣadr would go on to establish *Ḥarakat al-maḥrūmīn* (known today as Amal) in 1974 in order to provide the Shi'i of Lebanon with a militia by which they could protect themselves politically and militarily. But while Mūsā al-Ṣadr, like his cousin Muḥammad Bāqir, emphasised the need for mediating bodies such as SISC and Amal for disenfranchised Shi'i to *enforce* political interest,⁴⁸² Fadlallah chose a different route. After Mūsā al-Ṣadr's disappearance in 1978, Fadlallah filled the vacuum of authority left by his colleague and, remaining officially unaffiliated to political parties, he was also less constrained by political agenda.

⁴⁸⁰ Fadlallah also attempted to reconcile a dispute, which continued into the 1960s, between al-Ṣadr and Sayyid Muḥammad Jawād Mughniyya after the latter was snubbed in favour of the former to take the position of Shi'i leadership in Tyre in 1959. See Sankari, *Fadlallah*, 143-44.

⁴⁸¹ al-Ṣadr, *Mūsā al-Ṣadr wa-l-khiṭāb al-insānī*.

⁴⁸² Maryam Qandīl, “Maryam Qandīl: ‘Al-insān wa-maḥūr ḥarakat al-Imām al-Ṣadr wa-hadafuhu’,” *Markaz al-Imām Mūsā al-Ṣadr li-l-abḥāth wa-l-dirāsāt* (20 August 2016). URL: <http://www.imamsadr.net/News/news.php?NewsID=7544&h=2>.

Perhaps Fadlallah's more overtly ecumenical declarations during the Civil War best reflect his initiative to provide women of all sects with social equity and interest. Take, for example, his Friday sermon on 26 December 1986 titled "In Memory of the Birth of Jesus." His first acknowledgement is of Mary's "purity and sanctity." He explained that while God presented in Jesus a new miracle through which believers can worship Him and see themselves in Him, what emanated "through this woman (Mary) [was] a spiritual atmosphere which relates to God... and submits to God and lives through a deep feel of desire to satisfy God..."⁴⁸³ He asked in this sermon, "why does God desire to create humanity in this image?" "Because," he retorted, "this human is a distinctive (*mumayyaz*) human, [and] the will of God that makes him is a sign of humanity."⁴⁸⁴

How do I defend against this situation? Do I tell them that God sent me a king? Those who believe me will have mercy on me... I am a pure, pure and pure Mary who represents for me a parable for how I stand before this situation.⁴⁸⁵

Women as Contributors to the Common Good

From 1976 when Fadlallah wrote *Mantiq al-quwwa*, commanding right and forbidding wrong began to play a more prominent role in his thought as he refashioned its meaning in social politics. While *Mantiq al-quwwa* marks his initial attempt to reform this ethical duty against its previous conceptions, including Khomeini's,⁴⁸⁶ he scarcely mentions women in this volume. His scant attention to women in this manner, however, hardly means that women were marginal in this thought at this time, as we find a forthright attempt in his exegesis to balance men and

⁴⁸³ Fadlallah, *Min ajl al-Islām*, 353.

⁴⁸⁴ Ibid., 356. To support his claim, he uses Q.21:91, which says "And (remember) her who guarded her chastity: We breathed into her of Our spirit, and We made her and her son a sign for all peoples."

⁴⁸⁵ Ibid., 356-357.

⁴⁸⁶ See chapter one.

women’s responsibilities when commanding right and forbidding wrong.⁴⁸⁷ This will be addressed later, but it should be noted that this twenty-five-volume collection was written for a specialised and interested Muslim audience, typical of *tafsīr* collections.

In fact, not until years later in the mid-nineties—after the end of the Civil War and Khomeini’s death—do we find a volume in which he places the duty alongside *maṣlaḥa* to expand women’s role in society, marking a watershed moment in his thought. *Ta’āmmulāt islāmiyya ḥawla al-mar’a* is not only Fadlallah’s first complete work dedicated solely to women’s issues but also the work in which he began to make his most radical statements on women in society and politics for a wide audience.

In the introduction of his *Ta’āmmulāt*, he describes the work as an attempt to balance Islamic legislation with (real) life.⁴⁸⁸ He explains, “Islamic legislation presents human balance as a vital role in life balance in which [the *sharī’a*] legislates for men and women together.” Once again, as discussed in chapter one, we find Fadlallah associating the *sharī’a* with balance through the *maṣlaḥa* against *mafsada*.

The issue (of legislation), which imposes diversity within the whole, [is meant] for the purpose of enriching the internal content of the whole through various elements with specific differences, in which *maṣlaḥa* is permitted and demanded while *mafsada* is forbidden and refused based on careful study for [legal] reform... and reform of life.⁴⁸⁹

Among Fadlallah’s most striking statements is his interpretation of Q.9:71 in which he placed women alongside men in their responsibility to command right and

⁴⁸⁷ Clarke, “Making a Centre in the Periphery,” 53. While Clarke does not specifically address commanding right and forbidding wrong, he explains Fadlallah’s novel approach to *tafsīr*.

⁴⁸⁸ See chapter one for more on Fadlallah’s trope of balance.

⁴⁸⁹ Fadlallah, “muqadimat al-ṭab‘a al-rāb‘a,” in *Ta’āmmulāt*.

forbid wrong in “all spheres of human activities.” He also pays significant attention to the duty’s other characteristics:

If we should analyze women’s roles in the political and social spheres, we encounter the divine saying ‘The male believers and female believers are guides to each other, enjoying [sic] rights and forbidding evil.’ If we discern that ‘right’ encompasses all spheres of human activities that God cherishes... then we conclude that men and women believers endeavor to be each others’ [sic] guides, protectors, helpers, lovers, and to be to each other all that *wilāya* is meant to be.⁴⁹⁰

Fadlallah’s extension of an often-private relationship between men and women to a political relationship involving *wilāya*, the authority to govern, is striking. But to what extent does Fadlallah grant this authority to women?

To be sure, Fadlallah emphasised the importance of traditional gender roles. He believed that men and women each possess distinctly important roles in household and family:

The assertion that a woman’s importance is in the role of “housewife,” as the assertion that a man’s importance is in the role of “head of the house,” does not negate the necessity of movement on the wider path of humanity, in human reality, based on the openness of Islam in all issues, big and small, in establishing a route toward the objectives’ path...⁴⁹¹

Characteristic of Fadlallah’s enigmatic writing style, he refuses to define clearly the “path of humanity,” as well as the “movement” along this path. He continues to explain, however, that cooperation and co-dependence through basic duties in different roles constitutes his brand of humanity.

And this is what we draw from the generous verse that holds [female] believers accountable for commanding right and forbidding wrong as it holds [male] believers to it. And the issue arose in its inspiration of society to confirm Islamic human integration in *wilāya*. For where they are guides to

⁴⁹⁰ Aziz clearly intends “enjoining” where he writes “enjoying.” Aziz, “Fadlallah and the Remaking of the Marja’iya,” 209; Faḍlallah, *Ta’āmmulāt*.

⁴⁹¹ *Ibid.*, 23

each other in work, support and cooperation in all areas of participation, for which He said... (Q.9:71).⁴⁹²

We thus find that Fadlallah's version of *wilāya* is not related to political authority per se, though it does have political consequences. His *wilāya* is instead authority over one's domain of action and one's responsibility to perform one's duties within a community and for one's partner. Therefore, while men and women might or might not function in different domains, they are both equally responsible for their ethical conduct. For if a man, whether a brother, husband, or father, exercises a degree of power over a woman, then she would no longer bear responsibility for her actions.

Fadlallah's Qur'ānic exegesis shows another perspective of his ethical views on women. As far as this author is aware, Fadlallah's teacher, al-Khū'ī never interpreted women's positions in this *sūra*, merely noting in his *Al-bayān fī tafsīr al-Qur'ān* that *al-Tawba* is the only *sūra* without "bismillah" as an introduction.⁴⁹³ Al-Khū'ī does, however, address in his work the legal issues pertaining to women, such as divorce based on triple-repudiation and the invalidity of temporary marriage in the Sunni tradition. He does so, it appears, in order to adumbrate sectarian biases in interpreting the Qur'ān.⁴⁹⁴

⁴⁹² Ibid., 23.

⁴⁹³ Sayyid Abū al-Qāsim al-Mūsawī al-Khū'ī, *Al-bayān fī tafsīr al-Qur'ān*, 8th ed. (N.p.: Anwār al-hadā, 1981), 199.

⁴⁹⁴ Sayyid Abū al-Qāsim al-Mūsawī al-Khū'ī, *The Prolegomena to the Qur'an, translated with an introduction by Sachedina, Abdulaziz A.* (Oxford: Oxford University Press, 1998), 17-20. According to Sachedina, al-Khū'ī's goal in this work is "not only intended to establish the Shi'ite claim to authenticity of their creedal statement about the Qur'an but also [...] to challenge the Sunni claim over the custodianship of the authentic version of the Qur'an." Ibid., 17.

Fadlallah, on the other hand, in a departure from his mentor, recognises the attention paid to women in the Qur'ān in general and in Q.9:71 in particular. Of course, Fadlallah was less concerned with a defence of Shi'ism against Sunni narratives. He was instead more concerned with ethical-social duties. In his discussion of Q.9:71, he tells his readers:

We may note in this discussion about [male and female] hypocrites, and about [male and female] believers, Islam's attention to women in the negative and positive circumstances in society, with her expression as an administrator bearing liability for the deviation in what is caused by the negative results [related to fate]; and the hypocritical woman, like the hypocritical man, follows this path. Through commanding him to right and forbidding him from wrong, or to refrain from giving to him, or forgetting him [in supplication to] God... [this] is what salvages him from His anger and indignation, [and the same goes for] the believing woman, realising for society the positive results of commanding the right or forbidding the wrong...⁴⁹⁵

He continues, explaining the potential political implications of his interpretation:

We may draw inspiration from the call of women to take responsibility for all of [their actions in society]... And if the right (*al-ma'rūf*) includes the establishment of justice and the prevention of wrong, and includes the destruction of injustice, this means there exists legal sanctioning of political and jihadist action for women in [relation to] whatever the *umma* needs. [This is so] even if [women] do not have to undertake armed action in situations of war, but also in [peaceful] conditions. In this way, Islam affirms its humanitarian perspective based on the role of women in building society through Islamic rule, which is affirmed by Allah and His Messenger in the [Qur'ān] and Sunnah, and [it] directs the nation to benefit from its role in all areas in which it can provide, such as social, political, educational or military service. As a mother, wife and housewife—while we do not underestimate these important roles in our lives and the life of the nation—we do not consider these roles everything, nor do we detract from the other active roles at all levels of public and private.⁴⁹⁶

The above sentiment is also displayed in his *Al-masā'il al-fiqhiyya*, in which a large portion of Fadlallah's discussion on commanding and forbidding questions the necessity of the hijab and issues regarding marriage, such as whether it is

⁴⁹⁵ Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur'an* vol. 11 (Beirut: Dār al-malāk, 1998), 163.

⁴⁹⁶ *Ibid.*, 163.

“permissible to marry an uncovered woman,” or whether it is obligatory to convert one’s Christian wife to Islam.⁴⁹⁷

Khomeini’s interpretation of Q.9:71 echoes Fadlallah’s concerns but departs in several ways. In his introductory remarks to this *āya* in *Vilāyat-i faqīh*, he argues for the principles of the *fuqahā*’s supreme governance and for just *jihād* through commanding and forbidding. These two principles, for Khomeini, are essential for purging injustice and enabling popular sovereignty. The problem, he tells us, is that the previous recipients of God’s message—the Christians and the Jews—failed, first because the scholars whose duty was to deliver the divine message in its truthful form neglected their chief responsibility to prevent “vile and corrupt acts.”⁴⁹⁸ The second reason is because these scholars benefitted from the wealth of tyrants. Khomeini reminds his audience, however, that “God orders us to fear Him, not men and He says: ‘The believing men and women are friends and protectors to each other; they enjoin the good and forbid the evil’.”⁴⁹⁹

We see that in this verse, in the course of enumerating the attributes of the believers, the attributes that indicate mutual affection, solicitude, and the desire to guide each other, God begins with enjoining the good and forbidding the evil, considering this the prime duty. For He knows that if this duty is performed and is established within society, performance of all other duties will follow, from the easiest to the most difficult. The reason for this is that enjoining the good and forbidding the evil means summoning people to Islam, which is a struggle to establish correct belief in the face of external opposition, while at the same time vindicating the rights of the oppressed; opposing and struggling against oppressors within the community...⁵⁰⁰

⁴⁹⁷ Fadlallah, *Al-masā’il al-fiqhiyya: al-‘ibādāt* (Beirut: Dār al-malāk, 2015), 490-495.

⁴⁹⁸ Khumayni, *Islam and Revolution*, 109

⁴⁹⁹ *Ibid.*, 109.

⁵⁰⁰ *Ibid.*, 109.

The differences between Fadlallah and Khomeini's presentations are abundant. Fadlallah focused on the family as the basic political unit to strengthen his community through domestic, not necessarily private, life (i.e., life based on familial relationships as the strongest bonds within a society). Attending first and foremost to domestic life as the fundamental locus of duty strengthened Fadlallah's espousal of men and women's different responsibilities based on the common duty to command and forbid. Viewing human interaction through the lens of domestic politics, he was thus able to endow women with equity in order to strengthen their position in asserting a community's political interest.

Khomeini on the other hand focused on an Islamised community unified against a common foe, a foe manifested in historical religious transgressions. In this case, his concern was not with gender inequality but with political cohesion in his own popular movement. In other words, Khomeini's use of Q.9:71 appears as an effort to mitigate, however temporarily, the challenges of gender inequality while at the same time recognising the crucial role of women in his revolutionary project. For why would he have cited Q.9:71 if only then to ignore women in the same source?

There is a plethora of *āya* with which he might have invoked commanding right and forbidding wrong but he chose Q.9:71 because of its focus on gender. By erasing, or ostensibly ignoring, the differences between men and women within this *āya*, he depoliticised gender to promote unity, a different brand of unity than what we might label Fadlallah's diverse unity. To phrase this differently, Khomeini's ethics were tied to revolution rather than to the individual differences within a polity that

Fadlallah often emphasised to neutralise. But Khomeini understood the contours of gender, which he embraced as a key facet of his political agenda.

Interestingly, the above appears to be Khomeini's only reference to Q.9:71. Although he, like al-Khū'ī, discussed other aspects of *al-Tawba*, in no other written work of which I am aware does he address this *āya*.⁵⁰¹ To be sure, most of his other pronouncements on women do not refer to Qur'ānic injunctions but instead to immediate or historical circumstances.

For example, in his *Tafsīr-i sūra-yi ḥamd*, he rejected the possibility to interpret the Qur'ān, only to provide his own interpretation: "The Qur'an is not a book that someone can interpret comprehensively and exhaustively," he asserts, "for its sciences are unique and ultimately beyond our understanding. We can understand only a given aspect or dimension of the Qur'an; interpretation of the rest depends upon the *ahl-i 'ismat* who received instruction from the Messenger of God."⁵⁰² Khomeini thus eschews traditional Qur'ān as a source for political agenda, as well as enabling him to cite and interpret it as he sees fit.

Despite the differences between Fadlallah and Khomeini, their positions are based on the exigencies of civil war and revolution. Their positions should be further

⁵⁰¹ See Khomeini, on Q.9:30: "The Jews say, 'Ezra is the son of Allah'; and the Christians say, 'The Messiah is the son of Allah'. That is their statement from their mouths; they imitate the saying of those who disbelieved [before them]. May Allah destroy them; how are they deluded?" Khumaynī, *Kashf*, 21.

⁵⁰² Interesting though coincidental is that Khomeini's first four lectures, out of five, on *Sūra-yi ḥamd* were initially printed by the Muslim Women's Movement (*nahzat-i zanān-i Musalmān*). Khumaynī, "Lectures on Surat al-Fatiha," in *Islam and Revolution*, 363–434, at 363–366.

contrasted with that of the Saudi-Salafi scholar ‘Abd al-‘Azīz ibn Bāz’s (d. 1999)

interpretation of Q.9:71 in which he states:

The morals of the believing men and women so that they may learn such morals and practice them in order to stick to the Right Path. In this regard, there is no difference between princes, doctors, scholars and the common believing men and women as all are required to adopt the morals of Iman that Allah prescribed for His Servants and asked them to follow in order to attain happiness in this world and in the Hereafter. Making such morals a reality that Muslims live will be a means of bringing benefit to all in this world and a way to be saved in the Hereafter.⁵⁰³

At first glance Ibn Bāz appears to present an egalitarian perspective. All believers, he claims, are equal before God and in their obligation to command right and forbid wrong in order to make the secular world a better, more morally sound place, and to secure one’s place in the afterlife. Unlike Fadlallah and Khomeini, however, Ibn Bāz removes the political from his interpretation. Neither political interest nor sovereignty figure in his text, for sovereignty belongs neither to princes nor scholars but instead to God. Doing so, he also separates the ethical from the political, and thus removes meaning from his *fatwā* by placing ethics in an incontestable realm. Although Ibn Bāz and Khomeini scarcely address women in their interpretations of Q.9:71 notwithstanding its main text, Ibn Bāz reads the Qur’ān as an essentialised set of morals and laws, rather than as a means to authority—even his own authority. He is thus both unable to effect political change and unable to read religious text in a modern context because the morals within are simply an end to themselves rather than a tool by which a community, more important than individuals, can achieve a goal.

⁵⁰³ Ibn Bāz, “Morals of the believing men and women,” *Fatwas of Ibn Baz Volume 7* (Kingdom of Saudi Arabia: Portal of the General Presidency of Scholarly Research and Ifta’, N.d.), 190. URL: <http://www.alifta.net/fatawa/fatawaDetails.aspx?language=en&BookID=14&View=Page&PageNo=1&PageID=904>.

On the other hand, Khomeini and Fadlallah's ideas on gender stem neither from their knowledge of divine statements in the Qur'ān nor from the Sunna, but from their ability to interpret God's will as political theoreticians. This, in other words, allowed both Khomeini and Fadlallah to form a cohesive set of ideals for their respective political communities. It also allowed them to re-interpret the role of women in the public sphere for a common good.

Although Fadlallah and Khomeini both referred to commanding and forbidding when addressing the status of women, often without explicit reference to *maṣlaḥa*, this absence should not be understood as the absence of *maṣlaḥa* or its separation from *ḥisba*. On the contrary, it was a way by which divine injunctions on commanding and forbidding author a contestable and ambiguous concept (*maṣlaḥa*) to reform law and society. In other words, Fadlallah and Khomeini used the Qur'ān—an incontestable source—as the basis for an oft-ambiguous concept, *maṣlaḥa*. This is examined in the following discussion.

Gender as Popular Participation in the Post-Revolution/Post-Civil War Period

Rola el-Husseini has suggested that in 1990s,

the development of this new gender discourse in Lebanon was mainly the result of international interest in women's issues on the heels of the Fourth World Conference on Women in Beijing (1995) as well as a reaction to events occurring in Iran, where Ayatollah Khomeini had recently died.⁵⁰⁴

⁵⁰⁴ Rola El-Husseini, "Women, Work, and Political Participation in Lebanese Shia Contemporary Thought: The Writings of Ayatollahs Fadlallah and Shams al-Din," 273; Representatives from Lebanon and Iran attended the Beijing conference, which acknowledged "the voices of all women everywhere," as well as their progress, inequality, and the necessity for equal rights among men and women. See United Nations, *Report of the Fourth World Conference on Women, A/Conf.177/20/Rev.1*

El-Husseini might be correct, but debates within the *marja'iyā* on women's roles in the Islamic world are also representative of a battle for authority over tradition and innovation, framed within the context of religious authority on the Qur'ān, the Sunna, and the *sharī'a* in general. This is not to argue that shifting debates on gender in the Islamic world are confined to terms exogenous to the international community but, to the contrary, these are the terms with which Fadlallah, Khomeini, and others attempted to form an autochthonous language for debating gender, on par with the international community, partially in response to shifting global discussions that marginalised political-theological debates.

Long before the 1990s, Khomeini used gender to champion a common good. On 11 October 1978, for instance, Khomeini formulated a response to the 8 September 1978 "Black Friday" massacre, which resulted in deaths with estimates ranging from hundreds to several thousand. Prior to this bloody culmination, smaller more peaceful demonstrations occurred. They demanded "independence, freedom, and Islamic government," while calling for Khomeini's return, the end of Pahlavi governance, and significantly incorporating new middle-class opposition within the university and bazaari coalition. On 8 September, one day after martial law was established, thousands of demonstrators once again gathered. When soldiers were sent to disperse the crowd, they were ordered first to fire above the protesters' heads, then into the crowd of demonstrators. The marchers responded by barricading streets to

(Beijing: 14-15 September 1995). URL:
<http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>.

slow the responding tanks, stoning government buildings, while guerillas killed a riot officer and bombed a bus full of British technocrats departing an air force base.⁵⁰⁵

In his response, forty days after the massacre, Khomeini, from his residence in Neauphle-le-Château celebrated Iranian women who actively protested the shah. He declared: “Our lionhearted women snatch up their infants and go to confront the machine guns and tanks of the regime.” He then asked, “where in history has such valiant and heroic behaviour by women been recorded?” For Khomeini, those “brothers and sisters” who sacrificed their lives in protest against the shah transcended the international politics and ethics of the “‘guardians of human rights’... peddling the wares of the ‘great civilization’ over the heaped-up corpses of [Iran’s] young.”⁵⁰⁶ Furthermore, women were the first social group Khomeini addressed in his “Paradise of Zahra” (*Bihisht-i Zahra*) speech upon his return to Tehran on 2 February 1979.⁵⁰⁷ In this speech there is no shortage of praise for revolutionary women. Take his “Address to a Group of Women in Qum, March 6, 1979” in which he maintains that the advent of Islam in the Arabian Peninsula endowed women with rights that were previously absent:

Islam made women equal with men; in fact, it shows a concern for women that it does not show for men. In our revolutionary movement, women have likewise earned more credit than men, for it was the women who not only displayed courage themselves, but also had reared men of courage.⁵⁰⁸

For Khomeini, Q.9:71 provided an opportunity to encourage a unified political agenda while his above speeches presented an opportunity to define women as revolutionary participants at the vanguard of his popular movement. By addressing a

⁵⁰⁵ Fischer, *Iran*, 199.

⁵⁰⁶ Khumayni, *Islam and Revolution*, 239.

⁵⁰⁷ *Ibid.*, 254.

⁵⁰⁸ *Ibid.*, 263.

previously marginal social group, Khomeini established for them a crucial role in the nascent republic as well as a way by which they might participate in his revolutionary discourse.

Khomeini designated women not only as unprecedented heroes but also as mothers who hold distinct responsibilities in two realms: the public and private. He hardly granted men and women equal rights in the public and private spheres; he mandated the veil in public spaces, subordinated women to their husband's legal guardianship, and emphasised their duty to marry and procreate.⁵⁰⁹ Yet, their private actions, such as raising children, were, for Khomeini, to have a direct effect on society's future. He asserted, "...women are active in all aspects but they also raise children who will become active."⁵¹⁰ Despite encouraging an important public presence for women, Khomeini upheld differences that remain contentious within Iranian politics today.

In order to recognise the importance of commanding and forbidding in contemporary discourses on gender, as well as the legacy of Khomeini's "Address to a Group of Women in Qum," one need only re-examine Assembly of Experts member and Imam Khomeini Education and Research Institute Director Ayatullah Mişbāḥ-Yazdī's recent address to a group of mothers at his institute in Qom. Regarding child rearing he commented:

Although all children learn [to command right and forbid wrong] in the beginning of their education, we are facing misunderstandings in this field... Public oversight is committed to lessening the violation by society of

⁵⁰⁹ Kian, "Gendered Khomeini," 175-76.

⁵¹⁰ *Ibid.*, 182.

enjoining the just and forbidding the evil. People must abide by this principle...⁵¹¹

In this case, Miṣbāḥ-Yazdī co-opted commanding and forbidding as an institutional responsibility, i.e., one that is bound not only to the Qur’ān, but also bound to the Islamic Republic’s institutions. Different from Khomeini’s establishment of the Expediency Council, meant to mitigate political gridlock and undergirded by the extra-Qur’ānic concept, *maṣlaḥa*, Miṣbāḥ-Yazdī attempted to single-handedly author a Qur’ānic concept without a single reference to its source—similar to Ibn Bāz’s text. While a comprehensive discussion of Miṣbāḥ-Yazdī is not within the scope of this chapter, it is significant to note that his speech is very much a result of Khomeini’s legacy on women and the latter’s methods of jurisprudence. As chapter one discussed, Miṣbāḥ-Yazdī’s address appears to be an effort to appropriate a certain amount of authority over women’s child rearing and commanding right and forbidding wrong.⁵¹²

Where Khomeini attempted to incite popular revolution by drawing distinct boundaries between the sexes while labelling them equal participants, Fadlallah did neither. The latter eschewed a specific definition of equality, a definition which, according to him, meant that men and women should be “regarded as human beings

⁵¹¹ Miṣbāḥ-Yazdī, “nahī az munkar bā javāb nimī dahad,” *Rahesabz* (24 October 2014). URL: <http://www.rahesabz.net/story/87137/>.

⁵¹² See chapter one for more on how Miṣbāḥ-Yazdī’s speech is contextualised by the larger conversation on commanding right and forbidding wrong in the Islamic Republic.

without any reference to the sex of each of them, and none of them enjoys any singularity.”⁵¹³ Instead, he asserted that equality is defined as:

[T]he diversity of the human singularities that differentiate between both of them, giving each of them the chance to move freely within the circle of their own characteristics. Thus, the woman enjoys her humanity as a woman freely and the regulations set for organizing the man-woman relationship preserves the balance between the woman's and the man's singularities, so they would both complete each other in the movement of life and its activities and projects and the like.⁵¹⁴

Unlike Khomeini, whose distinction of the sexes depended on innate political *inequality* yet equal participation, Fadlallah’s distinction forgoes a clear delineation of responsibility based on difference. He discussed the problem, as he perceived, that contemporary Islamic movements promoted certain inequalities. But he clarified that one should not misinterpret these differences as inequality because “the Shari‘ah system gives every rightful person his right and determines for each party the elements that complement a party with the other.”⁵¹⁵ In other words, righteous men and women (i.e., those who strive to maximise *maṣlaḥa*) create a balance, as balance that the *sharī‘a* fosters in order to protect the rights of men and women.

Fadlallah attempted to draw women into the Lebanese public sphere without, as has been previously stressed, forming a revolutionary agenda or obligation. He was promoting reform within Muslim—not Islamised—public space that allowed for women and men to sustain a cooperative relationship legitimised by the *sharī‘a*. Where Khomeini maintained inequality as a tool by which he Islamised the Iranian public sphere, Fadlallah’s understanding of gender is premised upon differences

⁵¹³ Fadlallah, “Equality between men and women in theory and practice (part 1)”

URL:

http://english.bayynat.org/Women/Women_EqualityMenWomen.htm#.WjrLo0tG3eQ

⁵¹⁴ Ibid.

⁵¹⁵ Ibid.

regarding identity though equal ability and choice. Although Fadlallah maintained that “[no] person has the right, whether her father, mother, brother, or any relative, to obligate a woman by the *sharī‘a*” to perform domestic labour,⁵¹⁶ Lara Deeb has contended that in reality “this points to a tension in among the various arguments pious Shi‘i women make about their public and domestic roles.”⁵¹⁷

It is also important to note that these discussions are very much confined to the social-political spheres, mostly outside of state policy. From 1917-1920, a newly ratified Ottoman law of family rights applied to all religious communities only to be repealed in 1920 under French mandate rule. Eventually, in 1936 (ten years after the ratification of the Lebanese constitution), seventeen historic religious communities were recognised by law (later to become eighteen). The Sunni schools, along with the Ja‘fari Shi‘i “school”—whose courts were non-existent in Ottoman-ruled Lebanon and remains the only school recognised as an autonomous Shi‘i school with its own courts—were then regulated according to a 1942 decree.⁵¹⁸ Fadlallah thus promoted women’s ability to choose their roles in domestic space, on the one hand, while subordinating the private sphere to the public sphere—outside of state control—on the other hand. This implies that the pursuit of the common good as a public endeavour, while still influenced by the private, is more profoundly affected in Fadlallah’s terms by public action.

Paradoxically, Khomeini’s emphasis on the political and “religious” equality between men and women might have allowed them to take advantage of this

⁵¹⁶ Deeb, *An Enchanted Modern*, 210.

⁵¹⁷ *Ibid.*, 210.

⁵¹⁸ Morgan Clarke, “The Judge as Tragic Hero: Judicial Ethics in Lebanon’s Shari‘a Courts,” *American Ethnologist* 39, no. 1 (2012): 106-121, at 108.

difference through ways that were not possible before the revolution. His efforts to Islamise public space and his comingling of religion and politics were partially what lent appeal to his political theology. Take, for instance, pre-revolutionary women who were straddling what some defined as a binary between colonial modernity and tradition. Zahrā Rahnavard (b. 1945), the well-known reformist and spouse of 2009 presidential candidate and Green Movement symbol, Mīr-Ḥusayn Mūsavī, was a close supporter of ‘Alī Sharī‘atī. Despite having been an educated member of the middle class, she says that before the Revolution she felt torn between two political worlds. She describes feeling as though Islam was under attack while functioning publicly, as a student and teacher, in the “modern”: “Like two edges of a pair of scissors, Marxism and Modernism had declared war against traditions and Islam.”⁵¹⁹ And Rahnavard later critiqued the Beijing Conference, and other such international initiatives, for their involvement in the affairs of Iranian women.⁵²⁰

On the other hand, the National Union of Women, a pre-revolutionary Marxist-Leninist organisation, serves as an example of a group that was also unable to mobilise women across class lines due in part to a narrow political discourse.⁵²¹ This is in part reminiscent of the ideological divide that Kasravī’s work aggravated. Thus, while Khomeini’s discourse was neither homogenous nor all encompassing, it is one that effectively cut across class and socio-political lines to function as a political appeal that did not exist before. On the other hand, by acknowledging the role of women in public space, Khomeini reinforced the appeal of his Islamist political discourse.

⁵¹⁹ Janet Afary, *Sexual Politics*, 254.

⁵²⁰ Tohidi, “International Connections of the Iranian Women’s Movement,” 218.

⁵²¹ Afary, *Sexual Politics*, 277.

Khomeini's legacy of sanctioning women in positions of public authority is contested in contemporary discussions within Iran. In the speeches discussed above, he unequivocally defined "women equal with men," explaining that Islam "shows a concern for women that it does not show for men." For Khomeini, this equality extended to his "revolutionary movement" in which "women have likewise earned more credit than men."⁵²² Khomeini's first condition for being an imitable *marja'*, however, immediately set limits for women in the sphere of Islamic (and public) law, for example, candidates for *walī al-faqīh* and members of the Assembly of Experts. He stated unambiguously that the jurist of reference must be a man, specifying this with the term *mard*.⁵²³ While this term fundamentally disallows for women to ascend to *mujtahid* or *marja'*, discussions revolving around women running for presidency have focused on the term *rajul*, the Arabic word for "man" and a term used to define a condition for presidency in Iran's Constitution. According to Azadeh Kian, *rajul* can be "interpreted as referring to both a man and a renowned personality, which by definition can also be a woman."⁵²⁴ As a result of these discussions, eight women applied for candidacy in 1997, forty-seven applied in 2001, and eighty-nine applied in 2005.⁵²⁵ Kian also notes Khomeini's declaration that "God is satisfied with women's great service. It is a sin to sabotage this [woman's activity in the public sphere]." And along with this, he allowed four women to serve in the 1980, 1984, and 1988 parliaments.⁵²⁶

⁵²² Khumayni, *Islam and Revolution*, 263.

⁵²³ Khumaynī, *Tawzīh al-masā'il*, 12.

⁵²⁴ Kian, "Gendered Khomeini," 185-86.

⁵²⁵ *Ibid.*, 186.

⁵²⁶ *Ibid.*, 182.

Fadlallah was more forthright in his disregard for tradition and his authorisation of women to enter positions of power. Chapter one discussed Fadlallah’s refutation of the *ḥadīth*, which states, “never will succeed such a nation that makes a woman their ruler.” Fadlallah rejected such interpretation, contending: “even if this prophetic tradition was true and its content was comprehensive and its connotation was not discussed, it was talking about the nature of rule at that time which differs from the nature of rule at our times.”⁵²⁷ Contra al-Khū’ī’s approach to tradition in which he emphasised the Sunni-Shi‘i divide, Fadlallah eschewed a reference to the sectarian origins of this *ḥadīth*, discussing instead its historical-political implications. The first chapter of the present study discussed this refutation’s significance as it relates to Fadlallah’s legal methodology. He preferred juridical decisions that minimise corruption (*mafsada*) and maximise benefit (*maṣlaḥa*), which he extrapolated to women’s rights over their bodies and their roles in public, as in, for example, dancing if it performs a public good. Concurrently, however, he also accepted women’s use of *ijtihād*, not only to allow for women to hold juridical positions, but also to encourage their wide participation.⁵²⁸

Fadlallah’s contentious political theology is sharpened when further contrasted with al-Khū’ī’s position on women in public office. Al-Khū’ī stated: “Like any other laws that violate the canons of Islam that are based on the Koran and the Sunna, it is

⁵²⁷ Sayyed Muhammad Hussein Fadlallah, “The legitimacy of women assuming political and judicial positions,” tr., Manal Samhat, *Bayynat* (2 October 2014). URL: http://english.bayynat.org/Women/Women_Legitimacy.htm#.VRM2gUY7Xot. For more on how this reflects Fadlallah’s legal methodology, see chapter one.

⁵²⁸ Though he does not say explicitly that women can exercise *ijtihād*, nowhere in Fadlallah’s *risāla* does he stipulate that a *mujtahid* must be male. See Faḍlallah, *Al-masā’il al-fiqhiyya: al-‘ibādāt*.

not permissible for either men or women to become involved in such parliaments” in which women are included.⁵²⁹ He continued:

...because of her lack of rationality and her deficiency in organization and her ability to get to the level of men, by-an-large[sic] Islam does not allow her to be appointed as a judge or to give her the guardianship over her children... So how can it be possible for her to be allowed to guard the interests of the *umma* and whatever is related to such an overwhelming task?⁵³⁰

This is not only opposite Fadlallah but also representative of al-Khū’ī’s effort to uphold gender traditions. Despite the latter’s supposedly modern method of interpreting the Qur’ān according to “social exigencies and other human conditions,”⁵³¹ this position is curiously similar to Ibn Bāz’s above reading of Q.9:71. Al-Khū’ī is unable to adapt to the same modern developments to which Fadlallah responded. Instead of deploying *ijtihād* in the context of time and place, as his student had done, al-Khū’ī essentialised Islamic law as an unchanging and incontestable corpus, only referring back to the same corpus when making new judgements.

As chapter one noted, the subordination of Prophetic tradition to the Qur’ān to resonate with a wider audience unfamiliar with scholarly tradition is emblematic of modern Islamic political thought. But more important perhaps is that while Fadlallah and Khomeini both recognised the importance of women’s roles in society and the pursuit of a common good, they also used similar methods of jurisprudence. Both invoked the Qur’ān to subordinate tradition and consensus in order to justify innovative ways of constituting a community. With Q.9:71, they wrote against their peers and seniors, such as al-Khū’ī, who championed tradition over expediency.

Fadlallah’s emphasis on the Qur’ān to define the *sharī’a* should be understood as an

⁵²⁹ Aziz, “Fadlallah and the Remaking of the Marja’iya,” 208.

⁵³⁰ Ibid.

⁵³¹ al-Khūy’ī, *The Prolegomena to the Qur’ān*, 19.

effort to change tradition (and the *sharī'a*) through the primary source of law (the Qur'ān). It is also reflective of a brand of methodology in which law is undermined to provide a benefit, however contestable, to the Muslim—and sometimes human—community.

But how might one understand Khomeini's enigmatic politics? In other words, how might one reconcile his reinforcement of aspects of tradition while undermining or circumventing others? Khomeini's previous proclamations, in which he defined men and women as equal under the law, are often at clear odds with his and the Islamic Republic's policies. The 1982 and 2002 debates on amendments to Article 1130 of the Civil Code, which was brought back into effect after its dismantling in 1979, elucidate Khomeini's arguments on women in law and society. Prior to its dismantling, the Family Protection Law of 1931 established civil courts to prohibit polygamy and divorce without a court order. In 1975 an amendment was added allowing marriage contracts to provide women the right to divorce. After the immediate repeal of the family protection courts in 1979, which granted men unilateral rights to divorce, there was discontent among women as well as confusion among judges because there was no codified legal norm for divorce to which individual judges in *sharī'a* courts could refer. In 1979, Khomeini explained Islam's position on divorce as he understood it:

...When women wish to marry, there are certain prerogatives they can stipulate for themselves that are contrary neither to the shari'a nor to their own self-respect. For example, a woman can stipulate that if her future husband turns out to be of corrupt moral character or if he mistreats her, she would possess the right to execute a divorce. This is a right that Islam has granted to women. If Islam has imposed certain restrictions on both women and men, it is for the benefit of both. Similarly, just as Islam has granted man the right to divorce, it has also granted it to woman, on condition that the parties stipulate at the time of the marriage that if the husband behaves in a certain manner, the wife will have the right to execute a divorce. Once the man has accepted such a stipulation, he can never repudiate it. Apart from making it possible to

include such a stipulation in the marriage contract, Islam forbids the husband to mistreat his wife; if he habitually mistreats her, he is to be punished and the mujtahid will grant the wife a divorce.⁵³²

The concept of *'usr wa-ḥaraj* (hardship and suffering) was thus introduced by parliament as a means by which judges could grant women a divorce with the wife's initiation in the hopes that it might reconcile the state and the nation's own hardship. Typical of parliamentary bills and amendments in the Islamic Republic—even before the Expediency Council—the *'usr wa-ḥaraj* amendment to Article 1130 created tension between, and within, the Guardian Council and the parliament.⁵³³ While debates of this type would today fall under the jurisdiction of the Expediency Council, that is, they would be reconciled with *maṣlaḥa*, Khomeini intervened at the request of the Guardian Council, siding with proponents of the amendment. He justified his position on the grounds that if the judge fails to persuade or compel the husband to divorce in cases of hardship, then the judge himself can initiate the divorce.

But because this simply replaced the husband's authority with the judge's, a later amendment was proposed during Khatami's presidency in 1999 and later ratified in 2002. Both reformist and conservative arguments appealed to elements of Khomeini's rhetoric, the former referring to equity and justice provided by Islam, and the latter to theological morals and principles. One reformist presented a case of lethal domestic violence, telling her fellow delegates: "You have the duty to act in society in the discretion of justice: our women live in [terrible] conditions—the [terrible] way they are treated in courts..." A more conservative deputy arguing against the

⁵³² Khumayni, *Islam and Revolution*, 264. See also Marianne Bøe, *Family Law in Contemporary Iran: Women's Rights Activism and Shari'a* (London & New York: I.B. Taurus, 2015), 48-49.

⁵³³ Mir-Hosseini, "The Politics of Divorce Laws in Iran," 66-69.

reformist point noted: “These [proposals] are against religious principles. I beg you in these last days of the parliament not to ratify something that would cause problems on the Day of Resurrection, for God’s sake...”⁵³⁴

In Lebanon, on the other hand, the diversity of personal status laws based on confession and without civil courts has exacerbated inequality among citizens. The divorce laws in Lebanese Ja‘fari courts differ in some ways from those in Iran, giving women the right to divorce only in cases if the husband refuses to pay maintenance, when there is hardship or suffering (*‘usr wa-ḥaraj*), or abandonment.⁵³⁵ In addition to the unilateral right to divorce, if not otherwise stipulated in the marriage contract, men have the right to discipline and initiate intercourse with their wives, a practice that Fadlallah unequivocally condemned.

There have been attempts to introduce optional civil marriages, the most recent attempt in 2014, but various interests—both sectarian and other—have prevented parliamentary consensus.⁵³⁶ Political diversity expressed through sectarianism in parliament, a product of the confessional-based political offices, has thus hindered the state’s ability to reconcile its citizens’ problems, male or female, according to the principle of *maṣlaḥa*. As a result, Lebanese sovereignty is neutered for the sake of religious identity, a condition that Fadlallah and Khomeini both strived to avoid.

⁵³⁴ Ibid., 71-75.

⁵³⁵ *Human Rights Watch*, “Unequal and Unprotected: Women’s Rights Under Lebanese Personal Status Laws,” (19 January 2015). URL: <https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws>.

⁵³⁶ Ibid.

In recent years in Iran, female lawyers and proponents of expanding women's participation in the public sphere have used the Qur'ān to justify new methods of jurisprudence. In a 2015 article, Iranian lawyer Laylā 'Alī-Karāmī argued that Iran's reality necessitates religious discourse for political change vis-à-vis gender. Specifically, she suggests that "the Quran provides for 'mutual divorce', balancing the rights of spouses in the case of divorce." And this teaching, she argues, "should be used in addressing unequal treatment of men and women in divorce cases."⁵³⁷ She also addresses male jurists who propose and exemplify such a change, such as Ayatullah Mūsavī Tabrīzī (b. 1947), general secretary of the Organization of Researchers and Scholars of Qom Seminary, who in 2007 said:

We have many laws that address the status of women or even that of men that have to be reformed in accordance to current needs in order to come in line with and meet the needs of citizens. Concerning women, laws such as [fines for physical harm], inheritance, child custody, divorce ... can in fact be changed, and these reforms and changes are in no way in contradiction to Sharia.⁵³⁸

Using the Qur'ān to reinterpret or undermine tradition, whether Prophetic or civil, is the same means by which Khomeini and Fadlallah promoted their positions on women with Q.9:71. Unlike Ibn Bāz and al-Khū'ī, who attempted to render theology completely ethical without a concern for the political, the former pair sought to modernise Islamic political language. As such, invoking the Qur'ān as authorship of *maṣlaḥa*, over tradition, constitutes a crucial element of their political theology and a means by which they transformed tradition. Although, as chapter one claims, this is demonstrative of a move away from Prophetic tradition toward the primacy of the

⁵³⁷ Leila Alikarami. "How Iranian women are using Sharia to their benefit," *al-Monitor* (11 March 2015). URL: <http://www.al-monitor.com/pulse/ru/contents/articles/originals/2015/02/iran-sharia-womens-rights-equality.html#>.

⁵³⁸ Ibid.

Qur'ān as a legal and social source of conduct,⁵³⁹ it is more interesting to note that Khomeini's comprehensive approach to law, politics, and social conduct—without clear boundaries between the three—has provided a space in which women might, and do, exercise *ijtihad*. On the other hand, as Deeb demonstrates, Fadlallah's impact remained consigned to the social world of a more limited community.

At first glance, the self-defined grassroots movement, *Man hijāb-rā dūst dāram* (I Love the Hijab), appears to function as a voice for women who proudly wear the hijab. In reality, it is a domestic women's movement supported by the establishment⁵⁴⁰ against international feminism. Formed in 2014, the same year as My Stealthy Freedom,⁵⁴¹ an organisation which campaigns internationally from outside of Iran against the hijab, "*Man hijāb-rā dūst dāram*" invokes commanding right and forbidding wrong as a principle that appeals both to the highest levels of political authority and to Muslims who are most attracted by Islamic principles. As the website notes, *Man hijāb-rā dūst dāram* consists of

a group of people who have attempted to 'promote the hijab' in society with the goal of commanding right ... using simple artistic expressions and encouraging believers to [cover], [they] invite the general public to take more care of this cultural issue."⁵⁴²

But, unlike those politicians who attempt to codify in law commanding right and forbidding wrong by eschewing its fundamental and esoteric elements—such as the heart—as discussed in chapter one, *Man hijāb-rā dūst dāram* as an organisation accepts the principle's esoteric qualities. "This process" of promoting the hijab, the

⁵³⁹ Schulze, *Modern History*, 291; See chapter one.

⁵⁴⁰ *Man hejab-ra doost daram*, "About Us." URL: <http://manhejabradoostdaram.com/aboutus/>

⁵⁴¹ I would like to thank Bahar Saba for bringing to my attention the coinciding dates of these two movements.

⁵⁴² *Man hejab-ra doost daram*, "About Us."

organisation's website further contends, "will lead to the composition and closeness of the heart, causing the establishment of proper behaviour, so that, without opposition and cost, the duty to command right and forbid wrong will be implemented in a beautiful and subtle way in society."⁵⁴³ This organisation is inarguably exclusive to those women who embrace the hijab. But one might nevertheless argue that women's participation in this ethical duty reflects a degree of women's equal responsibility to men who previously maintained a monopoly on the authority to delegate this responsibility.

This notion of a woman's grassroots movement, despite its ties to the establishment, demonstrates the spectrum of political outlets if we juxtapose it to another brand of authority, however limited, wielded by women. This is the authority not only to transmit but also to produce religious knowledge. The authority to produce religious knowledge is more often associated with establishment/centre norms than any "bottom-up" grassroots movement and, therefore, has a greater effect on state and elite politics in the Islamic Republic. Dozens of women in modern Iranian history have held the title of *mujtahida*,⁵⁴⁴ which allows one to interpret sources and produce new rulings, a distinction absent among women in Lebanon. Among the best-known *mujtahida* in the Islamic Republic is Zuhra Şifātī (b. 1948), whose permission of *riwāya* was granted by Ayatullah Aqā Aslī Yarī Gharanī Tabrīzī in 1996 and who subsequently received permission of *riwāya* and *ijtihād* from Ayatullah Luţf Allah Şāfī Gulpāygānī (b. 1919).⁵⁴⁵ According to Künkler, however, her "writings are available in less than five North American and European libraries... not a single

⁵⁴³ Ibid.

⁵⁴⁴ Künkler and Fazaeli, "The Life of Two Mujtahidahs," 127.

⁵⁴⁵ Ibid., 147.

doctoral dissertation or scholarly monograph seems to have been written” on her, and less than a handful of biographies exist in Persian.⁵⁴⁶

Although she has written relatively little and maintains close ties with the state, including with former-President Aḥmadīnijād, she has given *ijāzas* of *riwāya* (permission to transmit, though not to produce judgement) to over forty male scholars.⁵⁴⁷ That her authority is accepted and respected by her male colleagues indicates that, despite palpable inequality between men and women, and notwithstanding clear limits on political lexicon and mobility, women participate in the same political spaces as men. The question is: how does this participation translate into meaningful change?

Conclusion

This chapter demonstrated how formulations of gender and family are crucial for constituting a political community. The role of women as it relates to law and the public-private distinction is arguably one of the clearest and most important battlegrounds for asserting authority, as Fadlallah and Khomeini’s thoughts on the subject demonstrated. The way women are positioned in social and political life is perhaps best demonstrated, as I argued, by how one deploys *maṣlaḥa* and *ḥisba*. In other words, that *ḥisba* is often a means to maintain tradition and *maṣlaḥa* is often a tool for reform was best exemplified by the above debates. If such is indeed the case, however, then *ḥisba* can also be used to justify reform—as rooted in tradition—with *maṣlaḥa*.

⁵⁴⁶ Ibid., 129; But Şifātī is undoubtedly well-known in Iran. See Muḥammad Badī‘ī, “Guft-u-gū bā faqīh pizhūhanda bānū Zuhra Şifātī,” *Kayhān-i farhangī* 199 (April-May 2003). URL: <https://www.noormags.ir/view/fa/articlepage/19531/>.

⁵⁴⁷ Künkler and Fazaeli, “The Life of Two Mujtahidahs,” 146.

Fadlallah's pronouncements on a woman's ability to hold political office and her cooperation in commanding right and forbidding wrong alongside men as housewife or politician illustrates Fadlallah's reinforcement of the obligation to perform the duty in various roles. This obligation, for Fadlallah, in the service of the pursuit of *maṣlaḥa* to allow for new opportunities for women (and men, for that matter, who would also benefit). Yet, his vision was confined for various reasons to realms outside of the state, even if he addressed the role of women in state positions for rhetorical reasons. Khomeini, on the other hand, used *maṣlaḥa* and *ḥisba* as a means to galvanise women to revolution—and communal ethical reform—with the effect of opening up a space in which they demanded subsequent participation in public-political life.

Man ḥijāb-rā dūst dāram and Zuhra Şifātī represent a segment of the spectrum of political-legal possibilities for women in the Islamic Republic. This spectrum is arguably a product of Khomeini's approach to women's participation in the revolutionary and post-revolutionary period, calling for their full participation alongside men with different responsibilities and rights. But neither the "*ḥijāb*" organisation nor Şifātī pose a threat to the welfare or stability of the Islamic Republic, even if they might challenge—to a very limited extent—men's authority. Instead, they function within the system's limits and boundaries that serve the Republic's broad interests. In other words, they are restricted to the roles that Khomeini envisioned for men, women, and the youth. On the other hand, Fadlallah's more open position toward women's roles in society paradoxically impacted public life less measurably than Khomeini's position. If Fadlallah's politics had an impact on

women, it is perhaps in Shi'i women's domestic life, a topic that is outside the scope of this work. Concurrently, both Fadlallah and Khomeini, as the next chapter will show, envisioned some of the same ethical and political principles, discussed above, in their composition of a state, its institutions, and its personnel.

Chapter Four: Competing Sovereignties

This final chapter examines how Fadlallah and Khomeini's respective quests for sovereignty are reflected in their conceptions of the common good and the ethics entailed in state and leadership. Considering the previous discussions on the public-private distinction and the family as facets (or "fragments")⁵⁴⁸ of a political community, we might argue that the desired outcome to constituting these facets is sovereignty, the definition of which remains multidimensional and contentious. For Fadlallah and Khomeini, a state or political community and its leadership are essential to their formulations of sovereignty.

As briefly addressed in the introduction to this thesis, the ambiguity of Khomeini and Fadlallah's political thought—an ambiguity manifested differently for both—is an unavoidable component of their sovereign claims and theories. Additionally, this ambiguity should prevent neither a fruitful analysis of sovereignty nor sovereignty as a meaningful field of study.⁵⁴⁹ Without this ambiguity, I argue, borrowing from Kalmo and Skinner, Khomeini and Fadlallah's thought would not possess the resonance that allows for its popular appeal.

As chapter one showed, Khomeini's brand of ambiguity is found in his lack of a clear methodology for using *maṣlaḥa* and his refusal to codify in law commanding and forbidding. Sadegh Haghghat convincingly historicises Khomeini's ambiguity in a discussion of *maṣlaḥa* and *ḥisba*'s roles, claiming:

⁵⁴⁸ See Kalmo and Skinner, *Sovereignty in Fragments*.

⁵⁴⁹ Kalmo and Skinner, "Introduction," 1.

The criteria for *maṣlaḥa* is one of the issues to which Shi‘i political jurisprudence has not paid much attention because of its lack of involvement with government throughout history. For this reason, the existing ambiguities have questioned the principle of the issue [of *maṣlaḥa*]. Because the main reference point for determining *maṣlaḥa* in Islamic government is the necessity of the *valī-yi faqīh*, it is assumed that he considers [both] the internal mechanisms (knowledge of time and politics, social and economic conditions of his society and the world, as well as familiarity with the principles and rules of the *sharī‘a*) and external mechanisms (such as the formation of expert groups, consultation with experts, advice, commanding good and forbidding evil, and referendum and voting) which determine the material of the Islamic *umma*.⁵⁵⁰

While Haghghat convincingly argues that inexperience was a factor in *maṣlaḥa* and *ḥisba*’s ambiguous applications in governance, the difficulty in understanding how to separate word from action, or policy from rhetoric, is beyond a feature of inexperience. It is a feature of what he terms “external” and “internal mechanisms,” both of which are necessary for modern theories of sovereignty. Khomeini’s assertions that religion and politics are never separate,⁵⁵¹ or the seemingly startling differences between his poetic and public life,⁵⁵² show that these dichotomies are strengths rather than contradictions or deficiencies.

These strengths lie in the refusal to relegate all actions to the surface and to deny complete transparency, resulting in a realm of exceptional powers for a governing authority, or, as Carl Schmitt would argue, this refusal enables a *deus ex machina* through the governing authority instead of through literal divinity. As such, divine intervention in the form of a political decision, a decision that was previously

⁵⁵⁰ Ḥaqīqat, “Naqsh-i maṣlaḥat dar ḥukūmat-i islāmī.”

⁵⁵¹ See chapter one.

⁵⁵² See chapter two.

God's prerogative, does not require any justification.⁵⁵³ *Maṣlaḥa* and commanding and forbidding, then, as Haghghat contends above, are composed of both the hidden and transparent (or "internal" and "external") characteristics of sovereignty, as certain aspects of their application cannot be justified or explained.

Fadlallah's ambiguity, on the other hand, is found in his refusal to directly function on the level of state politics, a refusal which is reflected in his position as a seemingly liminal social-political figure. Rather than a single office represented by a single jurist, Fadlallah in his later thought promoted "humanity" in *dawlat al-insān* as the primary vessel for divine-esque decision-making. By this point in the current study, one should not take this to argue that he was apathetic of state politics; he wrote extensively about the state. But he was occupied primarily with conceptualising sovereignty outside of the state. For when he writes about state sovereignty, his discussions are almost always theoretical and thus lacking in comprehensive formulation:

There is a difference between rejecting the legitimacy of the state and rejecting it as a [political] reality, in the sense of revolting against it and spreading chaos within it. For the maintenance of order is a duty of the *sharī'a*. I therefore said: we live with what is wrong, but we do not recognise its legitimacy.⁵⁵⁴

Although Fadlallah appears to justify his political compromise using sacred law, we might remember that he conceives of the *sharī'a*'s goal as balance rather than a monolithic body of codified conduct. The *sharī'a*'s purpose is thus to prevent "chaos" or immoderation. As we will see, the *faqīh*'s function as Fadlallah conceives

⁵⁵³ In, for example, Schmitt's famous definition of the sovereign as "he who decides on the exception." Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, tr., George Schwab (Chicago: University of Chicago Press, 2005), 5.

⁵⁵⁴ Fadlallah, *Ḥiwārāt*, 84.

is to facilitate this type of balance. More significant, however, is the harmony between accepting a political (i.e., external/material) reality and rejecting a theoretical (i.e., internal) reality. To accept a political reality is, in other words, to concede that revolution is inappropriate for the current time and place. Where Khomeini sought to foment momentary chaos with revolution, Fadlallah sought to prevent this condition. For Lebanon had experienced its era—not moment—of chaos with a civil war, out of which Fadlallah hoped to achieve social change rather than serious structural-political change.

But it is especially difficult to ascertain Fadlallah's precise political positions beyond their historical context. The very lexicon he uses is often ambiguous and his ideas are, like Khomeini's, seldom justified with any meaningful textual references to the Qur'ān or *ḥadīth*. It is, then, perhaps surprising that his longest discussion of *wilāyat al-faqīh*, found in *Min ajl al-Islām*, couches the concept in historical discussions of Islamic sovereignty, *ḥadīth*, and the Qur'ān, also referring, as we will see in the first section of this chapter, to European and Muslim experiences of governance, Prophetic ethics, and divine injunctions on the limits of earthly authority.

Nevertheless, instead of reading Khomeini and Fadlallah's ambiguity as an obstacle, their ambiguity should be understood as a general feature of global political thought and as a testament to the strength of most convincing political philosophers. Indeed, Khomeini and Fadlallah's ambiguity is more than a product of inexperience. It is a necessary quality, historically present in global questions of sovereignty, whether emanating from experience or inexperience.

Sovereignty is, by definition, ambiguous but it is nevertheless part and parcel of all discussions of politics. As such, conceiving of sovereignty as a political community's absolute authority, as Hinsley would define it, or a diverse community's self-governance "by their own laws and ways free from external subordination," as Tully argues, is tantamount to what Sunstein calls "incompletely theorized arguments."⁵⁵⁵ They are incompletely theorised neither because, like some of Fadlallah's theories, they might be incompletely specified—like, for instance, Fadlallah's ideas on Islamic government's form or institutions, or on where authority lies. Nor are they incomplete because of disagreements on the necessary context for a community's authority, or on the justifications for this authority, even if this might be the case. Instead, these theories are incomplete because they lack agreement on "high-level propositions," such as the meaning of sovereignty, as opposed to a lower-level one, which might determine who possesses sovereign authority.⁵⁵⁶ Fadlallah and Khomeini thus disagree on lower-level propositions that determine who should possess the authority to govern and what Islamic government might look like. They generally agree, in other words, that sovereignty's ultimate form lies in Islamic government where a political community maintains a degree of autonomy with a jurist, or jurists, to guide or lead them.

The principle of incompleteness, however, is comprehensible and relevant only in a comparative framework. As demonstrated in the complex separation of powers in the Islamic Republic, Khomeini's ideas of governance promote neither the

⁵⁵⁵ Francis H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986), 1; James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995), 195; Cass R. Sunstein, *Legal Reasoning and Political Conflict* (Oxford: Oxford University Press, 1996), 35; All as cited by Halmo and Skinner, *Sovereignty in Fragments*, 2-3.

⁵⁵⁶ Sunstein, *Legal Reasoning*, 36-38.

absolute authority of a community nor of a jurist. For Khomeini, jurists “do not have absolute authority in the sense of having authority over all other *fuqaha* of their own time” because “implement[ing] the laws of Islam... is a duty that devolves upon the *fuqaha* as a whole.”⁵⁵⁷

While a collective duty among jurists, not law, represents one constraint, constitutional law in the Islamic Republic draws real boundaries around juristic authority despite the Guardian Jurist’s exceptional powers. Constitutionalism as an idea in and of itself, and as a Western concept, represents the most obvious constraint to implementing divine law. That so much effort was devoted to drafting and ratifying a flawed yet effective document is illustrative of the limits on the Islamic Republic’s governing institutions and how ideas of legal justice are promoted. Among the limits on rule and methods for providing justice involve constitutional articles devoted to the Guardian Jurist, national sovereignty, and God’s sovereignty. On national sovereignty as it relates to God’s sovereignty, the Constitution states:

Absolute sovereignty over the world and the human being belongs to God. And it is He who has made human beings sovereign over their social destiny. No one can take this divine right away from human beings or apply it to the interests of a special person or group.⁵⁵⁸

As such, the subsequent Article 110 places limits on the Guardian Jurist’s authority, some of which include appointing key political posts, commanding the armed forces, resolving issues that cannot be resolved by the Expediency Council, dismissing the president, and pardoning criminal sentences.⁵⁵⁹ These are no doubt exceptional powers and are only a handful of the ones that exist for the Guardian

⁵⁵⁷ Khumayni, *Islam and Revolution*, 64.

⁵⁵⁸ The Constitution of the Islamic Republic of Iran, Chapter 5, Article 56. URL: <http://www.wipo.int/edocs/lexdocs/laws/en/ir/ir001en.pdf>.

⁵⁵⁹ *Ibid.*, Chapter 8, Article 110.

Jurist, but they limit his authority by circumscribing them in a codified legal document.

Although these limitations are not always observed and Khomeini's powers extended well beyond these limits, he was nevertheless subject to debates within and among government institutions, as well as among the Islamic Republic's citizenry.⁵⁶⁰ Fadlallah corroborates the theoretical limits of authority in *wilāyat al-faqīh*, explaining, as he sees it, that the limits of Islamic governance are established by God and enforced by a community of Muslims (the *umma*). Whereas medieval European kings, along with the Umayyad, Abbasid, and Ottoman Caliphs, exercised unrestricted and absolute authority, this is not so in the ideal Islamic case, especially for the Guardian Jurist.⁵⁶¹ These kings and caliphs based their rule, according to Fadlallah, on their personal authority with all their "mistakes, deviations, whims, and temperament."⁵⁶² The jurist on the other hand, explains Fadlallah, like the Prophet—but without the latter's infallibility—bases his authority neither on a personal relationship with God nor on lineage but on divine law and revelation.⁵⁶³ Furthermore, even the Prophet was accountable to the people "in his relationship with them on the basis of God's judgement."⁵⁶⁴

The value of ambiguity when asserting sovereign claims, however, is not shared by all. Some Sunni militant movements reject Khomeini's assertions. ISIS, to give but one example, not only labels the Shi'i as *rāfiḍa* (heretics), accusing them of

⁵⁶⁰ See, for example, Schirazi, *The Constitution of Iran*, 45-53.

⁵⁶¹ Faḍlallah, *Min ajl al-Islām*, 12-13, and 19.

⁵⁶² *Ibid.*

⁵⁶³ *Ibid.*, 14-15.

⁵⁶⁴ *Ibid.*, 16.

hypocrisy for practicing dissimulation, but also attempts to justify all action with sacred law. Consequently, there is no room for the subordination of the primary precepts of the *sharī‘a* to a state, as Khomeini had done. The boundaries between public and private life, to say nothing of exceptional decision-making in state politics, are thus destroyed; all possibility for sovereignty is lost. “Eliminating sovereignty in this way,” Faisal Devji concludes, “by repeatedly absorbing and making it visible within the law, can even be said to represent the Islamic State’s principle of movement – by which the law devours everything including its own limits and therefore its very possibility.”⁵⁶⁵ In other words, for ISIS, there is no authority (read: sovereignty) outside of law. God himself is thus reduced to His legal limits in a circular fashion.

Nevertheless, Kalmo and Skinner suggest that if “we conceive of sovereignty as an argument, as a claim to authority, then there is no sense at all in which it can be ‘reduced’.”⁵⁶⁶ At their core, in other words, arguments for authority are claims to sovereignty. In the case of this thesis, *ḥisba* and *maṣlaḥa* have already been established as claims to authority in the social and political spheres respectively, often without clear boundaries between the two and with different applications. In specific contexts and together, however, perhaps they equal a complete claim to sovereignty; these claims are not complete in the sense that there is a lack of disagreement or ambiguity, but complete in the sense that they appeal to social and political concerns. Islamic government implemented in a state and community, according to both Khomeini and Fadlallah, in turn allows for the highest form of justice to be served.

⁵⁶⁵ Faisal Devji, “A Life on the Surface: How to Give an Account of ISIS,” TANK Magazine, no. 64 (Summer 2015). URL: <https://tankmagazine.com/issue-64/features/faisal-devji/>.

⁵⁶⁶ Kalmo and Skinner, *Sovereignty in Fragments*, 7.

Fadlallah challenged Khomeini's understanding of Islamic sovereignty and hierarchy by repositioning sovereignty's relationship to *maṣlaḥa* and *ḥisba*. Fadlallah used *maṣlaḥa* neither to justify a guardian jurist nor to override the *sharī'a*, as Khomeini had done, but to apply theoretical limits to government while expanding the *sharī'a*. He did so in order to foster dialogue and pluralism in the wake of the Civil War. In other words, while Khomeini gradually transformed *maṣlaḥa* from a concept with which he justified Islamic government as the ultimate realisation of the *sharī'a* to a concept that could abrogate the primary ordinances of the *sharī'a*, Fadlallah conceived of divine law as a means to provide rights and duties outside of a state in order to hold the state accountable to a public. Fadlallah never explicitly denied the benefits of a Guardian Jurist or a council of jurists, but he accepted that it is an ideal end rather than a practical one. He placed greater limits on the *faqīh* as a political position, as both Fadlallah and Khomeini conceived of *maṣlaḥa* as the epitome of political, not social, ethics. *Maṣlaḥa* was therefore the primary means of exercising *legal* sovereignty, a sovereignty that operates very close to a concept of circular justice, linking the governor to the governed.

Commanding and forbidding, on the other hand, has a less-clear application for sovereignty. Ideas of ethics are ubiquitous in discussions on sovereignty in modern Islamic political thought, and commanding and forbidding permeates social and political life in different ways to ensure accountability. The duty has even become a permanent feature of constitutionalism, as Chapter 1, Article 8 of the Constitution of the Islamic Republic quotes Q.9:71 to promote commanding and forbidding as a communal responsibility. While Article 8 will be discussed in greater depth in the

second section of this chapter, the text of the article is unclear on whether this is a law to be enforced or simply meant as an ethical appeal. One might presume, based on this thesis's previous discussions, that if the common good is not appropriately provided, commanding and forbidding is a justifiable and communal recourse, indeed a duty, for accountability. It is a guideline for good governance and ethical-social conduct. In other words, it shapes the boundaries of social and political justice.

While Khomeini had at one point used *maṣlaḥa* to circumvent the traditional principle of *ahammiyya* in order to promote the violent performance of commanding and forbidding against the shah, the duty to command and forbid in the Islamic Republic reflects a diffuse authority to check and balance a government and a national community; it is mostly independent of political authority yet essential to sovereignty, as the constitution demonstrates—if only as an idea and ideal. In this way, national sovereignty, that is, authority, as enshrined in the Constitution's Article 56 is possible. God thus outlines the limits of national rule whereas the *faqīh* implements them. This is why and how the *faqīh* possesses different duties from the nation's citizenry, and, as will be discussed in the third section of this chapter, this is also why referenda was theoretically possible and indeed successful in ratifying the constitution.

Although Fadlallah advocated a very different form of government and politics from Khomeini, perhaps the former's idea of commanding and forbidding has much more profound implications in the absence of a serious formulation of government. This is illustrated in the prevailing absence of the duty in his writings on *wilāyat al-faqīh*, as will be examined. While his most sophisticated examination of

the duty is found in his *Mantiq al-quwwa*, he replaced the ethical components of commanding and forbidding with justice versus deviation while discussing *wilāyat al-faqīh*. Commanding and forbidding, however, experiences a later resurgence in Fadlallah's expression of *dawlat al-insān* in which it represents an alternative concept of duties and rights to those found in liberal Western democracies. Nevertheless, *maṣlaḥa* and the duty to command and forbid provide a good life, meaning a way of life that is politically and ethically preferred.

With the above in mind, this chapter discusses the ethical and political limits on state and leadership. It asks how Fadlallah conceived of *maṣlaḥa* and *ḥisba* as a component of state or good governance that might undermine Khomeini's understanding of sovereignty. The first section discusses how both conceived of the role of *wilāyat al-faqīh* and its implementation as a project for Islamic justice. This provides a framework for the second section on how a social contract might be theorised and challenged. The third section looks at how popular participation and movement might be used to effect reform and revolution. How, in other words, does popular movement limit and affect governance, and how in an Islamic Republic is this justified with reference to God's supposed absolute sovereignty. Finally, with the first three sections in mind, the fourth section is a comparison of competing formulations of state found in Fadlallah's *dawlat al-insān* and Khomeini's *wilāyat al-faqīh*. This final and most significant section shows how Fadlallah shifted the parameters of debate on Islamic sovereignty's form outside of the Islamic Republic's geographical and intellectual boundaries. Additionally, this final section examines mostly how Fadlallah engaged with Khomeini's ideas in the post-Khomeini era when the former

no longer attempted a reform of *wilāyat al-faqīh* and instead proposed a new brand of sovereignty.

Monarchy or the Rule of the Jurist?

Khomeini's approach to Islamic governance would not have been possible without the transformation of the role of Shi'i jurists in Iran. These jurists derive their legitimacy from their authority to interpret the will of the twelve Imams during the occultation of the twelfth one, who is expected to establish just government upon his messianic return.⁵⁶⁷ Prior to the late-nineteenth century, however, Shi'i jurists struggled with illegitimate rulers, often a king. They never advocated revolution but rather attempted "to influence governments so as to bring them close to a practical justice or even to the acquisition of a theoretical legitimacy."⁵⁶⁸ The relationship between jurist and state fundamentally changed with Khomeini's vision of the role of the *fuqahā'* (jurists), about which he declared, "...the true rulers are the fuqahā themselves, and rulership ought officially to be theirs..."⁵⁶⁹ To be sure, Khomeini's Islamic government that he proposed in *Vilāyat-i faqīh* was different from what he advocated in Najaf in the mid-1960s. His earliest lectures on the concept of *wilāyat al-faqīh* were primarily concerned not with Islamic government but with property rights and endowments, specifically *bay'* (transactions) and *mu'atāt* (donations).⁵⁷⁰ By 1979, however, Khomeini was able to put into practice his political theology and his vision of Islamic governance, which is dependent on and defined by juristic rule.

⁵⁶⁷ Calder, "Accommodation and Revolution in Imami Shi'i Jurisprudence," 3–20.

⁵⁶⁸ *Ibid.*, 7.

⁵⁶⁹ Khumayni, *Islam and Revolution*, 60.

⁵⁷⁰ Rahnema, "Ayatollah Khomeini's Rule of the Guardian Jurist," 89.

But how do Khomeini and Fadlallah interpret and re-interpret the function of juristic authority through Islamic history? Answering this question will illustrate where the two converge and diverge in determining which powers are reserved for the *faqīh* in a real or imagined Islamic state. Both reimagined how good governance preserves justice in an Islamic state and community, as well as how it would be provided by a jurist. *Maṣlaḥa* was a key consideration in providing justice with ethical limits—often expressed in legal discussions on government—linked to what should be commanded and forbidden.

The idea that law preserves sovereignty is not novel and was essential to the “Circle of Justice” in Middle Eastern empires since at least the tenth century.⁵⁷¹ But, while this “Circle” was used primarily to describe socio-political relations in the Ottoman and Iranian dynastic Empires, with its maintenance through the personal rule of a sultan or shah,⁵⁷² Fadlallah and Khomeini reimagined this “Circle” to prioritise legal and ethical limits, as well popular participation, instead of military, economic, and personal coercive power.⁵⁷³ Juristic rule depended on these new legal and ethical limits, which were based on Prophetic and Imamate authority to which *wilāyat al-faqīh* would adhere. Deviation from these limits would, at least theoretically, be met not with military or royal, or even divine intervention but with national and legislative intervention.

⁵⁷¹ Linda T. Darling, *A History of Social Justice and Political Power in the Middle East: The Circle of Justice from Mesopotamia to Globalization* (London and New York: Routledge, 2013), 32-36.

⁵⁷² Halil Inalcik, “Comments on ‘Sultanism’: Max Weber’s Typification of the Ottoman Polity,” *Princeton Papers in Near Eastern Studies*, no. 1 (1992): 49-72.

⁵⁷³ Fatma Acun and Ramazan Acun, “Demand for Justice and Response of the Sultan: Decision Making in the Ottoman Empire in the Early 16th Century,” *Académie des Sciences de Bulgarie Institut d’Études Balaniques Études Balkaniques*, no. 2 (2007): 125-148.

According to Fadlallah, as he explained in *Min ajl al-Islām*, the source of juristic authority is found not in the person of the jurist but in the legacy of Prophetic governance and judgement. His criticism of the personal rule of European kings and Muslim caliphs, referenced in the introduction to the current chapter, is not novel. He juxtaposed this brand of rule to that of the Prophet: “The Prophet does not launch his rule or learnedness from his personal temperament or personal attributes,” he argues. Instead, for Fadlallah, the Prophet’s rule was based on fate and God’s will, that is, “the path drawn for [the prophet] from the first point to the last,” the limits of which are found in God’s law.

The Prophet, however, embodies the law, meaning that law’s implementation “cannot be split, or deviate from this path, and this is what God limits”; all Muslims, including the Prophet, are bound by God’s path—the *sharī‘a*. The relationship between these, Fadlallah explains, is as follows: “the relationship between the Prophet and Muslims is the relationship between the message and the path for [implementing] the message... and the relationship between Muslims with the messenger (the Prophet) is the relationship [with] the religion within [the message].” Interesting about Fadlallah’s above analogy is that the character of the Prophet is irrelevant; the Prophet is simply and literally a vessel for law and God’s word.

Prophetic authority is therefore circumscribed not only in divine law and its limits but also in the means for assessing the required proof to judge Muslim subjects. Prophetic virtue is thus subordinated to this means of assessing proof. Although Fadlallah concedes that Muḥammad possessed unparalleled knowledge of the divine

(the hidden, or “*ilm al-ghayb*”), he rules and judges according to what is seen.⁵⁷⁴

When Muḥammad says, “I will judge you on faith and evidence,” Fadlallah interprets this to mean that God outlined a method for assessing material proof but, because this method is subject to human error, should error occur it neither allows for criticism of Prophetic judgement nor deviation from the limits of divine law; erroneous rule is due to erroneous evidence, not due to flaws in divine limits.⁵⁷⁵

If the Prophet’s authority stems not from his knowledge of the hidden but from his knowledge of the means for assessing proof and from his body as a vessel for the message, then whomever links Prophetic virtue to governance is misguided.⁵⁷⁶ Knowledge of the hidden, as argued in chapter two, is an essential political tool, and this knowledge is indispensable to rulership and good governance. However, Fadlallah emphasised that Muḥammad’s role was that of a role model for good governance—against deviation—who ruled in a “practical manner [based on] the manners that the intellect provides regarding the placement of the ruler in Islam.” But the ruler is nevertheless a Muslim, no different in his ability to claim authority than his Muslim subjects.⁵⁷⁷ Muḥammad’s era of rulership was thus not emblematic of a Golden Age to which a return is encouraged. Although Muḥammad’s governance was a blueprint for just governance, preferable to other eras and forms of government, the Prophet’s ability was not one of particular remark. Islamic governance instead possesses an unexpected banality found in just rulership on the one hand, and an educated, ethical nation on the other hand.⁵⁷⁸

⁵⁷⁴ Faḍlallah, *Min ajl al-Islām*, 16.

⁵⁷⁵ *Ibid.*, 16.

⁵⁷⁶ *Ibid.*, 18.

⁵⁷⁷ *Ibid.*, 18-19.

⁵⁷⁸ *Ibid.*, 20.

Fadlallah laid the groundwork for his discussion on the office of *faqīh* by minimising the personality of the Prophet and his infallibility. Doing so, Fadlallah marginalised Khomeini’s charisma and political astuteness, i.e., his personal attributes that are not included in Fadlallah’s proposed criteria for *faqīh*.⁵⁷⁹ Recognising Khomeini’s success—perhaps with a hint of facetiousness—as the “leader of the umma (*qā’id al-umma*)” who facilitated a reformulation of the theory of *wilāyat al-faqīh*, Fadlallah gave Khomeini credit for this endeavour while also acknowledging Muḥammad Bāqir al-Ṣadr’s contributions.⁵⁸⁰ But marginalising personal attributes (i.e., exceptionalism) allows for a more suitable condition for just rule; if the ruling jurist deviates from God’s just path, the nation has a duty to remove him regardless of his charisma:

It is worth mentioning that if the just *faqīh* in a governing position deviates from the path, and [loses] some of the basic conditions [of just governance], it is [incumbent] on the nation—from the position of responsibility—to refrain from obeying first, and, second, to remove him from his office...

Absolute rule is the rule of the individual in his individuality, which is known as totalitarian rule. In Islam, however, it is the rule of the leader through the law... In Islam there is no absolute rule for an individual.⁵⁸¹

It therefore appears that the nation, according to Fadlallah, is the first and foremost check and balance on the governing jurist. The nation has a duty to keep the jurist on a lawful and just path, which is why he promotes a well-educated nation. Fadlallah’s conception of the role of a *shūrā*, or consultative body, as a check and

⁵⁷⁹ Fadlallah outlines in his *Al-masā’il al-fiqhiyya* various qualities for the *marja’ al-taqlīd*. See Fadlallah *Al-masā’il al-fiqhiyya: al-‘ibādāt*, 22-27.

⁵⁸⁰ Fadlallah, *Min aḥl al-Islām*, 38 and 48.

⁵⁸¹ *Ibid.*, 20.

balance on the ruler, and conversely as a legitimising concept for the *faqīh*, is less important than popular accountability.

The previous sections of this thesis have not discussed how Fadlallah conceives of commanding and forbidding in the era of his ideal Islamic government. This is because he mostly avoids it. Commanding and forbidding, as Fadlallah conceives, is for communal governance in the absence of a state. Once an Islamic state with a just *faqīh* is established, however, commanding and forbidding becomes an ethical precept that connects the ruler with his citizenry with divine law as its basis. Although Khomeini's Islamic Republic is by no means Fadlallah's ideal form of Islamic government, it is nevertheless the only practical example with which he can engage. With the Islamic Republic, the ethical precept of commanding and forbidding as a social duty becomes less important than the limits of divine law and popular-national participation in politics. He explains:

[Voting in democratic states which is] for the power of capitalism or for focusing power [on the state] as such. Voting in Islam is not of the affairs that come from the depth of the constitution, like one of the *sharī'a*'s paths themselves. [The *sharī'a*'s paths] are taken from the signature of the *faqīh* who sees that the highest *maṣlaḥa* of *Islām* is based on this...

It was on this basis from which the president and all constitutional institutions in Iran emanated in *wilāyat al-faqīh*. Even when the nation moves in the spaces of [*dār al-*] *Islām* or [*dār al-*] *ḥarb*, it moves through *wilāyat al-faqīh* and [the *faqīh*'s] command and forbiddance (*amruhu wa nahīhu*), for his opinion is an opinion that gives to the details in the *sharī'a* with which his description is deputyship of the imam.⁵⁸²

On the one hand, Fadlallah views voting—as it occurs in Western democratic states—as a false criterion of democracy whereby citizens contribute knowingly or unknowingly to capitalism or false ideals of popular sovereignty. He makes it clear

⁵⁸² Ibid., 45.

that there is no higher principle to prevent adherence to these false ideals than in an Islamic state in which the jurist provides *maṣlaḥa*, interpreted according to divine law. On the other hand, in a nation over which the jurist has custodianship, Fadlallah explains, citizens abide by the limits of divine law. In turn, the ruling jurist(s) enforces these limits through commanding and forbidding as a binding ethical principle of socio-political conduct. Unlike Fadlallah’s previously examined discussions, the nation has less authority over commanding and forbidding under a just *faqīh* than they did in the absence of an Islamic state. Voting is instead an essential component of commanding and forbidding because both—voting and commanding and forbidding—inform how Islamic government manifests.

As Haghghat argued above, “external mechanisms (such as the formation of expert groups, consultation with experts, advice, commanding good and forbidding evil, and referendum and voting) determine the material of the Islamic *umma*.”⁵⁸³ By “material” Haghghat means “outward expression,” that is, the national expression of politics and society in organisations, institutions, and other forms. Fadlallah and Haghghat both conceive of commanding and forbidding, along with voting, as mechanisms through which the nation might participate in guiding the state’s *maṣlaḥa*, best defined here as harmony between ruler and nation in providing one another with justice and ethical checks. This interaction will inform the subsequent discussion on social contract and constitution after examining Khomeini’s ideas on the jurist’s role in his Islamic government. For neither Fadlallah nor Khomeini advocated constitutional democracy in its Western form or majoritarian governance with voting. However, the former’s idea of constitutionalism emphasised a direct

⁵⁸³ Ḥaqīqat, “Naqsh-i maṣlaḥat dar ḥukūmat-i islāmī.”

relationship and political agreement between a *faqīh* and his subjects rather than facilitating authority based on consensus.

The office of *walī al-faqīh* is undoubtedly the most significant position from whence authority in Khomeini's Islamic Republic emanates. Not simply a title, but a corporate office that outlives its occupant, the *walī al-faqīh* brings the twelfth Imam's authority into the present through his representative on earth. Unlike Hobbes's sovereign, which he defined as the state personified, Khomeini's nominal sovereign is God, whose sovereignty is reflected in rather than constituted by the *walī al-faqīh*'s mediation between the *sharī'a* and the nation.⁵⁸⁴ This is an issue to which we will return in the final section of this chapter, but it is important to note that Fadlallah, unlike Khomeini, had eschewed imamate authority when discussing *wilāyat al-faqīh* in his *Min ajl al-Islām*.

Although Khomeini claimed neither the infallibility nor the divinity of the twelve Imams,⁵⁸⁵ he claimed their custodianship inherited from the Prophet's mission until the arrival of the Messiah.⁵⁸⁶ More significant than changing the form of government in Iran, this development addressed the imperfection of the Islamic

⁵⁸⁴ According to Skinner, Hobbes was arguably "the earliest political writer to maintain with complete self-consciousness that the legal person lying at the heart of politics is neither the person of the sovereign nor the person constituted by the universitas of the people, but is rather the artificial person of the state." See Quentin Skinner, *Visions of Politics Volume 3: Hobbes and Civil Science* (Cambridge: Cambridge University Press, 2002), 14. But Khomeini wrote, "Islamic government is a government of law. In this form of government, sovereignty belongs to God alone and law is His decree and command. The law of Islam, divine command, has absolute authority over all individuals and the Islamic government." See Khomeini, *Islam and Revolution*, 56.

⁵⁸⁵ Amr G. E. Sabet, "Wilāyat al-Faqīh and the Meaning of Islamic Government," in *A Critical Introduction to Khomeini*, 69-87, at 85.

⁵⁸⁶ Amanat, "From *ijtihād* to *wilāyat-i faqīh*," 12.

Republic, which attempts to fulfil the will of the Imams to the greatest extent possible while awaiting the Messiah's arrival. The Islamic Republic is, in other words, a temporary government. Although the title of Imam did not immediately transfer to Khomeini's successor, Khamenei, the office of Guardian Jurist arguably still maintains Imamate legitimacy.⁵⁸⁷

Similar to Fadlallah's rejection of "personal rule," Khomeini's first mention of the Prophet in his *Vilāyat-i faqīh* is a rejection of monarchy. However, where Fadlallah rejected the personal rule of the first three Rightly Guided Caliphs and European kings as tyrannical because they deviated from the limits of divine law, Khomeini regarded emperors tyrannical not because of personal rule which subordinates divine law but because of spiritual deviation. "In the blessed letters that the Most Noble Messenger (peace and blessings be upon him) wrote to the Byzantine Emperor Heraclius and the Shahanshah of Iran," Khomeini recalls. "He called upon them to abandon the monarchical and imperial form of government, to cease compelling the servants of God to worship them with absolute obedience."⁵⁸⁸ Furthermore, "[t]he Umayyads and their successors in Islamic history did not allow men to grasp the true nature of Islam, in particular, Islamic government."⁵⁸⁹

Deviation from good governance was thus, for Khomeini, historically illustrated in one man's usurpation of spiritual righteousness, just like how the

⁵⁸⁷ Shahrough Akhavi clarifies, "[u]pon Khomeini's death, however, a crisis arose, as no individual could be found within the regime who had his stature... A month after Khomeini's demise—official sources began to use the religiously neutral term *rahbar* ("leader") rather than *faqīh* to refer to Khomeini's successor." In Shahrough Akhavi, "The Clergy's Concepts of Rule in Egypt and Iran," *The Annals of the American Academy of Political and Social Science* 524 (1992): 92-102, at 101.

⁵⁸⁸ Khumayni, *Islam and Revolution*, 31.

⁵⁸⁹ *Ibid.*, 333.

Pahlavi shahs inhibited the spiritual authority of clerics. Because Byzantine and Sassanid subjects alike were prevented from worshipping God as the highest authority, “monarchy and hereditary succession represent the same sinister, evil system of government that prompted the Lord of the Martyrs,” that is, Ḥusayn, “...to rise up in revolt and seek martyrdom in an effort to prevent its establishment.”⁵⁹⁰

On the other hand, Fadlallah’s concern with the *faqīh*’s powers relates to measurable expressions (“proof” in Fadlallah’s term) of justice and law rather than to spiritual justice. Perhaps, then, the difference between Fadlallah and Khomeini’s *faqīh* is that the former placed the responsibility on a community to ensure spiritual and ethical justice and on the *faqīh* for material and political justice. The *faqīh*’s primary source of political authority—as determined by Khomeini—is his spiritual virtue. Because Fadlallah never seriously envisioned a ruling *faqīh* for his political community in Lebanon, the duty to command and forbid were not as important for his idea of *wilāyat al-faqīh* as they were for communal self-governance. For Khomeini, however, ethical and spiritual duties are essential aspects of rule from which political justice follows. “Governments that do not base themselves on divine law,” Khomeini argues, “conceive of justice only in the natural realm; you will find them concerned only with the prevention of disorder and not with the moral refinement of the people.”⁵⁹¹

After the revolution, Khomeini held an interview in Qom almost entirely concerning the attributes of juristic rule in the newly established Islamic Republic. He traced the flawed forms of government throughout history, all of which failed either

⁵⁹⁰ Ibid., 31.

⁵⁹¹ Ibid., 330.

to provide ethical refinement or political justice, or both, concluding that religious leaders in Iran carried the mantle of these components of good governance.

Khomeini's interview was published in *Jumhūrī-yi Islāmī* on 2 January 1980. An excerpt from this interview in which he describes the ruling jurist's relationship to the Constitution is worth quoting at length:

Particular attributes have been set down as necessary for the 'holder of authority' (vali amr) and the faqih, and they are attributes that prevent him from going astray. If he utters a single lie, or takes a single wrong step, he forfeits his claim to governance. The whole purpose of the clause in the Constitution relating to the governance of the faqih is to prevent tyranny and despotism. Those who opposed the Constitution said that it instituted a form of tyranny, but how can that be? Whatever we do, it is always possible that some despot will come along in the future and try to do whatever he wants, but the faqih who possesses the attributes mentioned in the Constitution cannot, in the very nature of things, be a tyrant. On the contrary, he is just, not in the limited sense of social justice, but in the more rigorous and comprehensive sense that his quality of being just would be annulled if he were to utter a single lie, or cast a single glance at a woman past the degrees that are forbidden. Such a person will not act wrongly; on the contrary, he will seek to prevent others from acting wrongly. Justice, in this sense, has not been made an essential qualification for the President; it is possible that he might wish to do something wrong, in which case the faqih will prevent him, If the head of the army tries one day to go beyond his functions, the faqih has the legal right to dismiss him. The most valuable part of the entire Constitution is that which relates to the governance of the faqih; those who oppose it are acting out of either ignorance or self-interest.⁵⁹²

Justice, according to Khomeini's above description, is informed by the *faqīh*'s public and private conduct as outlined by the Constitution. Whereas ethically sound private conduct prevents hypocrisy, ethically sound public conduct sets an example for the nation. The *faqīh* is thus bound by constitutional norms of good governance because the Constitution, in a way, commands and forbids him. Although Khomeini, like Fadlallah, appealed to the law's authority as the highest form of justice and limits, Fadlallah placed law as a set of divine yet measurable limits while Khomeini

⁵⁹² Khumayni, "The Religious Scholars Led the Revolt," in *Ibid.*, 342.

positions the Constitution as a corpus of ethical requirements not dissimilar to the *sharī‘a* itself.

It is precisely the personal requirements for becoming *faqīh*, as stipulated in the Constitution, which allowed Khomeini, as the *faqīh*, to determine which laws and powers should be enforced or abrogated. For if he maintains his personal qualities, outlined in the Constitution,⁵⁹³ no one can deny his virtue and thus his legitimate provision of comprehensive justice outside of his own interests; his attributes ensure his adherence to the Constitution’s limits. In other words, these constitutional limits based on personal virtue rather than legal norms, potentially allowing for the dismissal of the *faqīh*, are once again subordinated to political success.

That Khomeini appealed to the Constitution instead of to Imamate authority for his post-revolutionary definition of the *faqīh*—as the arbiter of justice and moral refinement—is significant. Despite exemplifying moral and political virtue, the *faqīh* is nevertheless subject to a higher set of laws, not established by a nation but established instead by God and other experts. To appeal to Imamate authority would be to disregard the earthly and more immediate authority of his position and codified law, with more-serious applications for national politics. Instead, Khomeini placed himself squarely within codified law because it is only in this realm where he

⁵⁹³ Article 5 of the Constitution lists the qualifications for *faqīh*: just, pious, knowledgeable about his era, courageous, and a capable and efficient administrator.” The Constitution of the Islamic Republic of Iran, Chapter 1, Article 5. Additionally, as Article 109 states, he must possess the following: “scholarly qualification for issuing religious ruling concerning various discussions in jurisprudence,” these merits include “required justice and piety in leading the Islamic community; sound political and social perspective, prudence, courage, sufficient administrative capability, and power for leadership.” “The Constitution of the Islamic Republic of Iran,” Chapter 8, Article 109.

maintains his ability to suspend or enforce the law, even if codified law does not wholly determine his authority or action. In other words, by binding himself to law rather than to direct cosmic authority, Khomeini was able to reserve for himself the very power to “decide whether the law needs to be suspended in its entirety”—not entirety as “whole” but entirety as in permanently or indefinitely.⁵⁹⁴ Thus, while law limits and endows rulership, it also establishes the contours of decision-making.

In Fadlallah and Khomeini’s Islamic states, law itself limits juristic rulership and ethical virtues. Whether ethical virtues are the responsibility of the jurist or nation, their function nevertheless is to keep in-check political limits; those ethical virtues additionally justify revolution or reform. Where Fadlallah defined tyranny as unlimited rule based on inheritance and the absence of divine limit, Khomeini defined tyranny as arbitrary law and legislation without spiritual and virtuous adherence God’s authority and the limits entailed. Although both thought the absence of enforceable earthly and divine legal limits tyrannical, Fadlallah regarded rulership and good governance as a set of methods. Khomeini, on the other hand, was occupied with institutions, virtue, and government in its modern constitutional manifestation.

Khomeini declared, “[i]n Islam then... it is law alone that rules over society.”⁵⁹⁵ But Khomeini’s idea of law differed from Fadlallah’s. Law according to Khomeini is enforced by and manifested in institutions, virtues, and constitutional articles instead of through a more direct relationship between ruler and ruled. For

⁵⁹⁴ Here the translator, George Schwab, also makes the distinction between suspension and abrogation, the latter of which is a feature of sovereign dictatorship. This distinction, though referring to a different context, is helpful in understanding the relationship between Khomeini’s authority and constitutional law. Schmitt, *Political Theology*, 7.

⁵⁹⁵ Khumayni, *Islam and Revolution*, 56.

Fadlallah, in order for this direct relationship to fulfil its purpose, that is, to uphold law, the nation must be educated. An educated nation therefore ensures that the ruler enforces law in an ethical and legitimate manner. Conversely, according to Khomeini, knowledge of the highest level is necessary only for jurists and governing offices rather than for the nation, illustrating his more limited idea of public participation in politics.⁵⁹⁶

Presenting his later opinion on Khomeini's version of *wilāyat al-faqīh*,

Fadlallah's answer to the question of the *faqīh*'s role in a state was:

The *faqīh* is the state's *mujtahid* and the authority of that which is necessary for the administration of his state's public affairs. Public affairs are those which refer to the public order, which balances the lives of Muslims and others, and which maintains their political, economic, social, and security interests (*maṣāliḥ*) while establishing their lives as a community. As such, the state has jurisdiction over those that are titled *al-umūr al-ḥasbiyya* [accountable affairs] because the state is the custodian of those who have lost their guardians, such as minors and the insane... And if the state of the jurist [*wilāyat al-faqīh*] is not proven with legitimate text from the Qur'ān and the Sunna, then the state is [limited only] to the maintenance of order...⁵⁹⁷

As we see in the above text, the concept of *al-umūr al-ḥasbiyya* is an important concept when constituting the provision and maintenance of national interest in various spheres. These affairs relate to daily legal issues, such as unused land or children without guardians, which cannot be resolved by two conflicting parties;⁵⁹⁸ the resolution of these affairs directly affects national interest—in politics, economics, society, and security. As such, the *faqīh*, according to Fadlallah, must undertake responsibility for these accountable affairs.

⁵⁹⁶ Ibid., 59.

⁵⁹⁷ Fadlallah, *Al-masā'il al-fiqhiyya: al-'ibādāt*, 31.

⁵⁹⁸ *Amr biḥ ma'rūf va nahī az munkar az dīdgāh-i Imām Khumaynī*, 224-225.

Although responsibility for accountable affairs is also, in certain situations, a public duty, according to Khomeini, they are essential duties related to commanding and forbidding to prevent deviation during the imam's occultation. Without resolving accountable affairs, in other words, political affairs of the state are negatively impacted.⁵⁹⁹ Furthermore, despite being outside of the "holy law"—the *sharī'a*—they nevertheless "must be implemented" by the *faqīh* as the earthly deputy of the imam; this is the relationship of *al-umūr al-ḥasbiyya* to *maṣlaḥa*.⁶⁰⁰

Fadlallah wrote the above passage long after the Iranian Revolution and Khomeini's death, after which he became more openly critical of the Islamic Republic. This passage is not an immediate follow-up to his previously discussed examination of the *faqīh*'s role in an Islamic state, even if it might bear parallels to what he wrote in his article on *wilāyat al-faqīh* in *Min ajl al-Islām*.⁶⁰¹ This indicates that despite his more direct criticism from the 1990s, as we will see, he did not drastically change his views on the *faqīh*'s powers. Like Khomeini, Fadlallah's understanding of *wilāyat al-faqīh* is based on necessity and order, demonstrated in part by his explicit use of the term *maṣāliḥ* when referring to society's interests above. But Fadlallah invoked *maṣlaḥa* to benefit a community's material interests without placing the responsibility of ethical interests—in this case—on the ruler. The material world appears to be the responsibility of the government and the *faqīh*, as he explains that order, i.e., upholding the law, is the primary goal of rulership.

⁵⁹⁹ Khumaynī, *Tahrīr al-wasīla* vol. 2, 443. Citation from *Amr bih ma'rūf va nahī az munkar az dīdgāh-i Imām Khumaynī*, 224-225.

⁶⁰⁰ *Ibid.*, 224.

⁶⁰¹ The paragraph quoted is almost a direct reproduction of what Fadlallah wrote in *Min ajl al-Islām* except for his final sentence on Qur'ānic and Sunnaic proof. Fadlallah, *Min ajl al-Islām*, 38.

Unlike Khomeini, Fadlallah understood the *faqīh* not as the definitive representative of the Imam’s will and Islamic sovereignty—which entails spiritual integrity and ethical principles—but instead as a custodian of the nation’s citizenry and affairs. Downplaying the messianic and constitutional function of the *faqīh*, Fadlallah further explained, “the role of the *faqīh* is to oversee the precepts and laws of Islam for the people, generally and specifically.”⁶⁰² For him, the *faqīh* possesses a more specified and limited role than Khomeini’s Guardian Jurist. In Fadlallah’s thought, this jurist is neither the ultimate authority in all state affairs nor the singular medium between divine authority and state. And Fadlallah did not seriously advocate *wilāyat al-faqīh* as an end to be reached.

In this instance, Fadlallah challenged Khomeini’s understanding of sovereignty. He neither directly attacked the latter’s authority nor did he reject the legitimacy of a more general concept—a “high-level proposition,” to use Sunstein’s phrase—of *wilāyat al-faqīh*. His most powerful weapon was his authority as *mujtahid*. Although he accepted that “[the *faqīh*] is acting representative of the infallible Imam in the era of occultation,”⁶⁰³ he departed from Khomeini by striving to limit the powers and responsibilities of the *faqīh*. He limited the *faqīh*’s ability to implement the *ḥudūd* of the *sharī‘a* but also asserted that the *sharī‘a* should be taken from the *faqīh* and not from the constitution.⁶⁰⁴ As such, he advocated *wilāyat al-faqīh* as a project with alternative imaginings rather than as a teleological history for Shi‘i jurists that ends with *wilāyat al-faqīh*. And it goes without saying that Khomeini

⁶⁰² Fadlallah, *Al-masā’il al-fiqhiyya: al-‘ibādāt*, 19.

⁶⁰³ *Ibid.*, 19.

⁶⁰⁴ Fadlallah, *Min aḥl al-Islām*, 38.

exerted much effort in curbing dissent and muffling domestic and international opposition to his understanding of *wilāyat al-faqīh*.

Khomeini and Fadlallah's Social Contracts

As alluded above, indispensable to Khomeini's concept of *wilāyat al-faqīh* was the idea of a contract, or an agreement with a larger community, which sometimes, though not always, is presented in a constitution. Viewing concepts as contingent on circumstance, Khomeini formulated a social contract as a constitution by which a sovereign state could cope with eventual challenges to the constitution's key concepts, such as *wilāyat al-faqīh* and even *maṣlaḥa* and *ḥisba*.

“Islamic government,” Khomeini tells us, “is neither tyrannical nor absolute, but constitutional.” But it is not constitutional in the sense that a majority must agree on a constitution. Despite checks and balances, along with a separation of powers, the Constitution is not majoritarian because, as he argues, there has already been historical consensus among Muslims. “The body of Islamic laws that exist in the Quran and the Sunna,” Khomeini explains, “has been accepted by the Muslims and recognized by them as worthy of obedience. This consent and acceptance facilitates the task of government and makes it truly belong to the people.”⁶⁰⁵ Governance, state, and sovereignty are thus not possible without an agreement between the *faqīh*—the interpreter and executor of the *sharī'a*—and his constituency. This agreement also implicitly sanctions Khomeini's supreme authority on all matters of public good and ethics in Iran.

⁶⁰⁵ Khumayni, *Islam and Revolution*, 55-56.

Kari Palonen, the Director of the Finnish Centre of Excellence in Political Thought and Conceptual Change, has recently compared two theories of conceptual change regarding social contracts. These theories provide a new perspective on how key concepts in Khomeini's Islamic government might be challenged. Palonen uses Reinhart Koselleck's theory of "historical time" along with Quentin Skinner's speech act theory and understanding of conceptual change in order to show that time's passing might present opportunities to change the ideas on which a social contract depends.

On the one hand, this change might be a result of the emptying of a concept's political significance with time's passing, as Koselleck posits and Khomeini attempted to prevent. On the other hand, it might come from the verbal or written redefinition of a concept, as Skinner argues and Fadlallah demonstrates. This perspective is important because it addresses the historical significance of key concepts—like *wilāyat al-faqīh* within which *maṣlaḥa* and *ḥisba* operate—as a means for change and reform; it avoids general or grand theorising. Furthermore, this perspective neither advocates, as some scholars do, for the destruction of key concepts in order to disarm the state, nor does it presume a conflict between modernity and religion.⁶⁰⁶

⁶⁰⁶ Abdol Karim Soroush advocates for a government, specifically democratic government, which is separate from all religious sources and concepts such as the Qur'ān. See Abdol Karim Soroush, "Mysticism in Contemporary Islamic Political Thought," *Abdol Karim Soroush* (22 March 2006). URL: <http://drsoroush.com/en/mysticism-in-contemporary-islamic-political-thought/>. On the other hand, Mas'oud Pedram and Ebrahim Yazdi presume a conflict between modernity and religion that must be resolved through an intellectual approach to religion. Mehran Kamrava, *Iran's Intellectual Revolution* (Cambridge: Cambridge University Press, 2008), 127. Zaheer Kazmi argues that these perspectives are characteristic of Liberal Muslims, that is, Liberal Muslims like Soroush, Yazdi, and Pedram operate only in relation to and within the liberal democratic state, which

According to Palonen, Koselleck's argument proposes a temporal element to conceptual change vis-a-vis a social contract. As time passes, associations with concepts on which a contract is based might change. An example from further afield is the concept of freedom, which, in the United States' political imagination was once limited to white, landowning men, but has expanded to include previously marginalised groups. This evolution is due to challenges enabled by what Koselleck calls historical time.⁶⁰⁷ Associations with concepts change from generation to generation because of different experiences, or they change more rapidly because of a deliberate challenge. In other words, the terms on which an original consensus was reached might change due to the above factors. Palonen writes:

In this sense, time remains an element of *fortuna*, which the *virtù* of the contract attempts to keep in check, supported also by the philosophy of history. The idea of turning time itself to an operational principle of political action, playing not only in time but also with time, is interpreted by the contractarians at best in an evolutionary sense.⁶⁰⁸

As such, time can change concepts in a variety of ways. On the one hand, it can make obsolete the acceptable terms of a contract or it can function as a political tool used to change these terms. On the other hand, time can aid a vision of history that fosters consensus.

benefits from them and from which they benefit in turn. They rely on state institutions, using its lexicon of secularism and rights in its service even if sometimes critical of it. See Zaheer Kazmi, "The Limits of Muslim Liberalism," in *Los Angeles Review of Books* (4 April 2014). URL: <https://v2.lareviewofbooks.org/article/limits-muslim-liberalism/>.

⁶⁰⁷ Eric Foner has discussed in depth the concept of American freedom, arguing that freedom has never had a fixed definition in the American political imagination and has always been contingent on historical circumstance. See Eric Foner, *The Story of American Freedom* (New York: W.W. Norton & Company, 1999), xiv.

⁶⁰⁸ Kari Palonen, "The History of Concepts as a Style of Political Theorizing: Quentin Skinner's and Reinhart Koselleck's Subversion of Normative Political Theory," *European Journal of Political Theory* 1, no. 1 (2002): 91-106, at 92.

Anticipation for the Messiah, a principle on which the Islamic Republic's social contract is partially based,⁶⁰⁹ fosters consensus not only to prevent challenges to fundamental ideals, but also to silence dissent. There is a paradox here: the Islamic Republic exists—as does Khomeini's authority—only until the Messiah returns; it is an imperfect interpretation of the Messiah's will. But the state cannot exist once the Messiah returns. It is thus in the sovereign interest of the Islamic Republic to postpone the Messiah's arrival indefinitely. This is what Palonen terms “arresting time.”⁶¹⁰ Despite the Islamic Republic's theoretical dependency on a messianic aspect of time, “arresting time” weakens time's potential as a means for change. Perhaps like the Byzantine concept of the *Katechon*, a Catholic political power that postpones the coming of the Antichrist, contemporary Iranian sovereignty is premised to an extent on a community's state of anticipation.

Despite the papal parallel noted above, it was the ecumenical Fadlallah who explicitly engaged with the office of Pope and flirted with the idea of reforming Shi'i structures of authority to function more like papal ones. Although Fadlallah would later criticise the Pope, particularly in 2006 when he accused the Pope of misunderstanding Islam in the latter's speeches on anti-terrorism,⁶¹¹ Fadlallah held

⁶⁰⁹ Article 5 of The Constitution of the Islamic Republic also reads: “During the Occultation of the *Walī al-‘aṣr* (may God hasten his reappearance), the *wilāya* and leadership of the *umma* devolve upon the just (‘*ādil*) and pious [*muttaqī*] *faqīh*, who is fully aware of the circumstances of his age; courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Article 107.” See “The Constitution of the Islamic Republic,” Article 5.

⁶¹⁰ Kari Palonen, “Concepts as a Style of Political Theorizing,” 101.

⁶¹¹ Muḥammad Ḥusayn Faḍlallah, “Al-Bābā: faham khaṭā’ al-Islām,” in *Munāqisha hādī’iyya li-afkār Bābā al-Fātīkān* (Beirut: Dār al-malāk, 2007), 33-35; al-Sayyid Muḥammad Ḥusayn Faḍlallah, “Lā nuqbil i’tidhār al-Fātīkān ‘alā taṣrīḥāt al-Bābā,”

the Papacy in high regard because of its international authority and the mechanisms for papal selection. He even advocated reform of the *marja' iyya* to structure it like the Papacy in which “experts elect the *marja' iyya* who leads an international community of believers.”⁶¹² Fadlallah’s proposition was undoubtedly meant to undermine the singular role of Iran’s *faqīh* as *amīr al-mu'minīn* (commander of the faithful). But perhaps it was also an implicit effort to challenge the Islamic Republic’s monopoly on anticipating the Messiah by drawing on other sources of anticipation like the one in Christianity.

In any case, the desired result of Iran’s anticipation is the obfuscation of historical moments during which challenges to the state are possible; time freezes until the Messiah arrives and implements perfect government. Khomeini’s understanding of contract after the Prophet’s death further illustrates how history can be used to foster consensus and to mitigate conceptual change in the present:

After the death of the Most Noble Messenger (peace and blessings be upon him), none of the Muslims doubted the necessity for government. No one said: ‘We no longer need a government.’ No one was heard to say anything of the kind. There was unanimous agreement concerning the necessity for government... Government, therefore, was established...⁶¹³

Khomeini emphasised early Muslims’ agreement to form a political community in the absence of divine intervention (though still in agreement with God’s will). Doing so, he illustrated that stability through a social contract is a critical feature of Islamic governance. Its terms can be traced to the faith’s beginnings while

Al-wasaf (16 September 2006). URL: <http://www.alwasatnews.com/news/651173.html>.

⁶¹² Fadlallah, *Hiwārāt*, 561.

⁶¹³ Khomeini, *Islam and Revolution*, 43.

providing an historical precedent for the absence of God's legal authority in the Imamate's early decades.

This is not to argue that Khomeini's ideal was apolitical or positioned above historical change. With his efforts to mitigate undesired conceptual change, Khomeini drove politics toward a direction that he favoured and thought necessary, as demonstrated during and immediately following the 1979 Revolution. A profound example of the endeavour to mitigate undesired conceptual change in particular relation to commanding and forbidding is found in Chapter 1, Article 8 of the Constitution of the Islamic Republic, which reads:

In the Islamic Republic of Iran, inviting one to good, the promotion of virtue and the prohibition of vice (commanding right and forbidding wrong), is a general and concomitant responsibility of the people toward one another, the government toward the people, and the people toward the government. The conditions, boundaries, and nature of this relationship are set by the law. According to the Qur'an: "The believers, men and women, are protectors, one of another: they promote virtue, and prohibit vice."⁶¹⁴

The above article was written during the sixteenth meeting of the Constitutional Assembly on 22 September 1979. However, it neither appears in the Constitution's previous drafts nor is there a record of debates on the article. There is no evidence that it was written or addressed by Khomeini, but it passed with fifty votes, three opposing votes, and two abstentions, indicating that he approved of the consensus to include it in the final draft. It is worth noting, however, that there is no method for its legal implementation.⁶¹⁵

⁶¹⁴ The Constitution of the Islamic Republic of Iran, Chapter 1, Article 8. The quoted *āya* is from Q.9:71.

⁶¹⁵ *Tabyān*, "Amr bih ma'rūf va nahī az munkar dar qānūn-i asāsī" (17 March 2017). URL: <https://article.tebyan.net/147201/>.

Some assembly members who reviewed the final draft of the Constitution opposed its inclusion not because it lacked a clear method for its implementation but instead because, according to their argument, an assembly cannot circumscribe the conditions for commanding and forbidding—conditions outlined by the *sharī‘a*—in constitutional law. The opposing assembly members argued that its conditions (*sharāyat*), limits (*hudūd*), and qualities (*kayfiyāt*) should instead be addressed solely in books of *fiqh*.⁶¹⁶

On the other hand, those who supported the duty’s inclusion argued that it provides a basis for other laws in the Constitution as well as those subsequent laws that might be passed by parliament. According to these supporters, it additionally serves as a basis for the “general supervision of the people over the state and vice versa.”⁶¹⁷ The current head of the Coordinating Council of Islamic Propaganda of Tehran, Hujjat al-Islām Sayyid Muḥsin Maḥmūdī, argued that Article 8 of the constitution is “one of the progressive principles of the Islamic system, which sets out tasks for the Iranian nation and government.”⁶¹⁸

The head of the Coordinating Council of the Islamic Propaganda of the city of Varamin added, “[i]n this principle, the duty of commanding right and forbidding wrong is considered to be the universal duty of the people of the nation, and both the people and the government must enter this field.”⁶¹⁹ He continued: “...it should be noted that in the discussion of commanding right and forbidding wrong, the

⁶¹⁶ Ibid.

⁶¹⁷ Ibid.

⁶¹⁸ Muḥammad-Rizā Ḥaydar, “Aṣl-i hashtum-i qānūn-i asāsī hamchinān mazlūm ast/kūtāhī mas’ūlān dar iḥiyā-i amr bih ma‘rūf va nahī az munkar,” *Mihr khabarguzārī* (3 January 2014). URL: <https://www.mehrnews.com/news/2171345/>.

⁶¹⁹ Ibid.

government and the people are complementary. And if you can work together, you can expect the right results.”

But despite codifying the duty to command and forbid, its inclusion in the Constitution is merely a gesture by which the ethical integrity of the Constitution as the *sharī‘a* might be preserved. The article is both unenforceable and lacking in any measurable political effect, which is why there was little contention regarding its ratification—not to mention the lack of documentation on the process of its inclusion;⁶²⁰ there is no real political effect of this article. But, in the same year we also see Khomeini define the duty as a public (“*‘umūm-i mardum*”) responsibility “to prevent deviation everywhere they see it... and thus the spread of corruption (*fasād*) will be prevented...”⁶²¹ In other words, the state and the public—according to Khomeini and the Constitution—both have a duty to command and forbid one another in order to prevent corruption (*fasād*)⁶²² and maximise benefit (*maṣlaḥa*). This is a clear change from the pre-revolutionary responsibility of the public to overthrow a state based on the principle to command and forbid.

Subsuming into state politics both *maṣlaḥa* and commanding and forbidding, as legal and social limits of conduct, became the primary way by which these concepts were linked, contended, and authored. The most apparent example of Khomeini’s efforts to mitigate undesirable change is found in his institutionalisation of *maṣlaḥa* with the establishment of the Expediency Council in 1988. As addressed in chapter one, contra Khamenei, Khomeini placed the supremacy of the Islamic state

⁶²⁰ See chapter one for more on the duty’s contention in law.

⁶²¹ Khumaynī, *Ṣaḥīfa-yi Imām* vol. 4, 413. As quoted in *Amr bih ma ‘rūf va nahī az munkar az dīdgāh-i Imām Khumaynī*, 55.

⁶²² *Ibid.*, 135-141.

over all primary ordinances of the *sharī‘a*, a primacy upheld by the Expediency Council.⁶²³ While *maṣlaḥa* as a means for circumventing law was discussed earlier, it is relevant from another perspective.

Khomeini deployed concepts on which the Islamic Republic depends as weapons to undergird his political theology, enabling him to cope with necessity and national interest. He viewed the past and the future of such concepts as contingent upon historical moments, which are always fashioned by politics. We should remind ourselves that Khomeini had criticised his contemporaries before establishing the Expediency Council, stating, “if a person is extremely knowledgeable in matters concerning seminaries, but cannot determine what is good for society... or in general lacks the necessary wisdom in social and political issues, that person is not a jurisconsult [or Faqīh]...”⁶²⁴

The establishment of the Expediency Council, as an institution codified in a constitutional amendment, might thus be understood as an effort to resolve temporal shifts that affect the Islamic Republic’s social contract. Doing so, the Council functions as a way to prepare for a major political change with a new *faqīh*. In other words, Khomeini intended that the Expediency Council take a decision-making role alongside his successor to maintain a degree of his ideal sovereignty. Ratifying these amendments out of perceived political necessity, however, also changed the terms accompanying the original social contract. Where *maṣlaḥa* was a more ambiguous concept during Khomeini’s tenure, it subsequently became fixed—if only theoretically—in the amended Constitution and within its own institution. To propose

⁶²³ Zubaida, *Law and Power*, 210. See chapter one.

⁶²⁴ Ehteshami, *After Khomeini*, 20. See chapter one.

a more metaphysical interpretation: the divine quality of *maṣlaḥa* as a vessel for *deus ex machina*—a sovereign decision—was partially lost with its legal corporatisation on earth. This change in leadership along with the institutionalisation of *maṣlaḥa* resulted in what Skinner terms “illocutive” challenges.

Palonen’s examination of Skinner’s theory of conceptual change and speech acts might provide us with a clearer perspective on Fadlallah’s challenges to Khomeini’s contract between the 1980s to the present. Palonen argues that, according to Skinner, one can undermine a contract by challenging the normative definition of concepts surrounding an agreement. The terms might remain but their uses and associations may be rewritten. She explains:

The legitimacy of the contract can always be questioned from the perspective of different illocutive acts. The background reasons, the manners, the tones and styles of contracting might easily appear as more historically significant than the content of the aspects agreed upon by the act of contracting.⁶²⁵

Accordingly, an opponent might target a once insignificant concept within a contract and transform it into a political weapon that carries substantial weight. Fadlallah, however, did not target an insignificant concept but one that was arguably incontestable in Iran’s context.

For instance, after al-Khū’ī’s death in 1992, Fadlallah declared that his *marja’ al-taqlīd* was Ayatullah ‘Alī al-Sīstānī (b. 1930), while Khamenei endorsed the Iranian Sayyid Muḥammad ‘Alī Arākī. After Arākī’s death in 1994, Khamenei, believing that he was without opposition, attempted to merge the office of *walī al-faqīh* with that of *marja’ al-taqlīd*. But when Fadlallah published his *Al-masā’il al-*

⁶²⁵ Palonen, "The History of Concepts as a Style of Political Theorizing," 101.

fiqhiyya in 1995, the effect was twofold. Fadlallah's publication was seen as a claim to the *marja' iyya*,⁶²⁶ undermining Khamenei's claim to commander of the faithful by diverting the latter's followers away from him. That Fadlallah, a widely followed jurist and scholar, refused to lend his support to an occupant of the office often associated with the highest juridical authority in Shi'ism was a challenge to that very office.

As Sabet reminds us, a *marja' taqlid* as well as "the faqih—usually of the rank of Ayatollah—cannot attain that senior position independent of popular acclaim and financial support that the people can withhold in favour of another."⁶²⁷ The successful deliberations on Khamenei's ascension, however, illustrate what Khomeini had intended years earlier: the Constitution's supremacy in political matters. Even if Khamenei's credentials were doubted, necessity dictated his ascension.

Nevertheless, Fadlallah's statement provided a basis from which one might pose an additional challenge to the Constitution. The text of Article 107 of the Constitution of the Islamic Republic states: "The Leader thus elected by the Assembly of Experts shall assume all the powers of the *wali al-amr* and all the responsibilities arising therefrom."⁶²⁸ In this case, an authority—Fadlallah—undercut a conceptual foundation on which Iranian sovereignty was built, allowing for further challenges to the meaning of *wilayat al-faqih*.

Fadlallah's challenges continued in his *Al-masā'il al-fiqhiyya*, written in the

⁶²⁶ Sankari, *Fadlallah*, 256.

⁶²⁷ Sabet, "Wilāyat al-Faqīh and the Meaning of Islamic Government," in *A Critical Introduction to Khomeini*, 77.

⁶²⁸ The Constitution of the Islamic Republic, Article 107.

mid-1990s, in which he further strove to limit the powers of the *walī al-faqīh*. For example, he proposed a division of the *walī al-faqīh*'s powers, arguing the difference between the *walī* and the *faqīh* not dissimilar from his previously discussed promotion of a more papal system of selection whereby the office would hold international authority instead of provincial power. “The jurist is knowledgeable of the laws of the *sharī‘a* via detailed evidence,” argued Fadlallah, “while the guardian is the jurist who exercises [the laws’] implementation...”⁶²⁹

Fadlallah distinguished between Iran as an exceptional case and nations in which there is no *faqīh*, adding that “the greatest good of the nation” should dictate the political, social, and economic judgements of the jurists.⁶³⁰ Exemplifying a Skinnerian challenge to an historical concept, Fadlallah’s notion of *wilāyat al-faqīh* was strikingly different from that of Khomeini’s and from what was enshrined in the Constitution of the Islamic Republic. In fact, Fadlallah’s apparent opposition to merging the office of *walī al-faqīh* with that of *marja‘*, along with his promotion of a papal-like system for selecting a *marja‘* indicates that he—whether consciously or unconsciously—endeavoured to corporatise the *marja‘iyya*.

This project would have two implications: first, it would have removed the supreme legal and theological authority of the *faqīh*. But second, and more significantly, it would have affected the democratic selection process in selecting a *marja‘*, transferring authority from the consensus of all Shi‘i to that of an elite group of scholars. Article 107 therefore allowed for a re-interpretation of the *faqīh*'s role, making him potentially accountable to the global *marja‘*'s commands and

⁶²⁹ Fadlallah, *Al-masā‘il al-fiqhiyya: al-‘ibādāt*, 35.

⁶³⁰ *Ibid.*, 35.

forbiddances—at least ethically if not politically.

It is not clear from his writings whether Fadlallah intended the above consequences. He indicated that he preferred sacrificing a global Shi‘i consensus of *marja’* for the corporatisation of the *marja’iyya* in order to undermine the Islamic Republic’s proclaimed monopoly on the office. Although Fadlallah operated outside of Iran’s political system with little relevance to popular domestic politics in Iran, his writings nevertheless serve as an example of appropriating the language of one’s opponent in order to undermine said opponent’s authority. Redefining the role of *walī al-faqīh*, Fadlallah thus challenged the parameters of debate on a concept within Khomeini’s social contract and thus on Islamic sovereignty in general.

To be sure, Khomeini’s social contract can be defined as what Armando Salvatore defines as “reasoning for achieving public goods.” This reasoning, he argues, is practiced in faith-based traditions by “[linking] concepts of practical reasoning to ideas of connective justice.”⁶³¹ In this light, the Constitution of the Islamic Republic should be understood not as a compromise between the *faqīh* and his subjects but as a social bond through which common interests and limitations among citizens are fulfilled. Contrary to Salvatore’s assertion that faith-based notions of “connective justice” are situated “outside of the north-western ‘core’ of modern Europe,” Iran’s contract represents a brand of constitutionalism that possesses some European features.⁶³²

⁶³¹ Salvatore, *The Public Sphere*, 11.

⁶³² Schirazi, *The Constitution of Iran*, 1.

At the same time, the Islamic Republic's Constitution is borne out of independent epistemological traditions and maintains an historical precedent with the Iranian Constitutional Revolution. But the 1906 Constitution failed, according to Khomeini, not because constitutionalism is a Western or corrupt concept in itself, but instead because the law was not based on Islamic principles of justice and good governance. He explains:

...when people wanted to write laws and draw up a constitution, a copy of the Belgian legal code was borrowed from the Belgian embassy and a handful of individuals (whose names I do not wish to mention here) used it as the basis for the constitution they then wrote, supplementing its deficiencies with borrowings from the French and British legal codes...⁶³³

The Constitution, and thus the possibility of Iranian sovereignty, was sabotaged by foreign propagandists. Khomeini adds, "they added some of the ordinances of Islam in order to deceive the people, but the basis of the laws that were now thrust upon the people was alien and borrowed." With his derision of "alien" laws and the obstruction of Islam, he not only defended the concept of constitutionalism, but he allowed for the possibility of a new brand of constitutionalism through which a different understanding of the common good and justice might be provided.

"[Islam] is a religion that provides guidance for conducting the affairs of state and a guide to the straight path," Khomeini argues. "[It] is neither Eastern nor Western. It is a religion where worship is joined to politics and political activity is a form of worship."⁶³⁴ Therefore, it seems that even Khomeini attested that the common good in Islam, and the reasons for achieving these goods, should be attributed the

⁶³³ Khumayni, *Islam and Revolution*, 31.

⁶³⁴ *Ibid.*, 275.

same political importance as those within the “north-western core of modern Europe,” while simultaneously recognised as autochthonous features of Islamic history.

In Khomeini’s formulation of constitutionalism, the Constitution of the Islamic Republic provides justice both for the provider of justice (i.e., the *faqīh*) and for the nation. This is, in other words, his formulation of the “Circle of Justice” in an Islamic state through which connective justice is equated with the provision of the common good. Therefore, delivering Islamic justice, as Khomeini sees it, is the primary function of the Constitution, which protects the nation from tyranny and bad ethical conduct in rulership while limiting the nation’s behaviour. Admittedly, this is nothing remarkable. All order in the Islamic Republic, as in liberal constitutional nation-states, is established and upheld by the constitution.⁶³⁵ What, however, is remarkable is what the Islamic Republic’s Constitution allows and who or what it represents.

“A modern constitution,” argues Kahn, “imagines no political situation or action to which the law does not apply; it can imagine nothing that cannot be evaluated as a matter of law.”⁶³⁶ The Constitution of the Islamic Republic, however, not only allows for an exceptional decision to be made to maintain order, but also places the authority to make this decision squarely in the hands of he who is not the Republic’s nominal sovereign, that is, God; the *faqīh* is instead he who decides on the exception. Additionally, Iran’s Constitution is not the representative of popular will. The Constitution is instead the representative of God’s will and His justice.

⁶³⁵ Kahn, *Political Theology*, 47.

⁶³⁶ *Ibid.*, 54.

Nevertheless, popular will figures into Iran and Lebanon's political order, as will be addressed in the subsequent section.

Fadlallah's immediate political context shaped his writings. His tenure in Lebanon spanned the Lebanese Civil War, during which there was virtually no social contract, and the post-war/Khomeini period when he was writing his *Al-masā'il al-fiqhiyya* when there was arguably still precarious social cohesion. It is also important to note that by the time he wrote his *risāla*, Fadlallah already proposed his *dawlat al-insān*, allowing him to cease his serious and amicable engagement with *wilāyat al-faqīh* like the one found in *Min ajl al-Islām*. If at this stage Fadlallah wholeheartedly supported Khomeini's vision of state or government, he would simply be advocating a supremely Shi'i structure of hierarchy and politics. This support would have sabotaged the possibility for inter-communal rapprochement, contributing instead to the Iranian agenda, which sought to establish an Islamic state in Lebanon.⁶³⁷ Fadlallah instead attempted an engagement with popular will and communal rapprochement to constitute the contours of revolution, reform, and government.

Political and Ethical Limits of Divine Rule and Popular Will

Khomeini's constitutional vision promoted in *Vilāyat-i faqīh* depended heavily on a discourse of popular will as a means to establish a new political community for whom a constitution could be written. His account of Exodus, the biblical account of the Israelites' migration from Egypt to Canaan, represents an effort to justify popular revolution. He wrote, "...an Islamic government will gradually come into existence. In the Qur'an, God Almighty has forbidden men to obey the *taghut*— illegitimate

⁶³⁷ 'Abbās Kākāy'ī and Maryam Sālārī, *Siyāsāt-i khārijī-yi jumhūrī-yi islāmī-yi Irān dar Lubnān* (Tehran: Intishārāt-i pizhūhishkada-yi Imām Khumaynī, 2013).

regimes—and encouraged them to rise up against kings, just as He commanded Moses to rebel.”⁶³⁸

Khomeini legitimised his vision of the common good by appropriating key moments in Islamic history. At first glance, his reference to biblical history, in which Moses led a resistance against the Pharaoh, colours the above quote as a theological claim: God demands an Islamic government in which the *sharī‘a* is law, “just as he commanded Moses to rebel.” When examined more closely, however, it can also be read as a secular call for revolution because divine intervention is absent from the revolutionary moment. Khomeini’s interpretation of Exodus supports the popular removal of an unjust regime and the establishment of a new order, refuting one man’s rule over other men. Yet there exists no *deus ex machina* by which God initiates revolution, apart from hardening the Pharaoh’s heart. God’s initiative therefore provides nothing more than the justification and opportunity for revolt. This moment is almost completely based on human initiative. In Khomeini’s estimation, revolution occurs when a national identity forms and is opposed to another identity. To use Carl Schmitt’s distinction of the political:

Any distinction that can serve as a marker of collective identity and difference will acquire political quality if it has the power, in a concrete situation, to sort people into two opposing groups that are willing, if necessary, to fight against each other.⁶³⁹

For Khomeini, the initial step in his project was to establish a new community—a new public—for which a common good would take on new meaning.

⁶³⁸ Khumayni, *Islam and Revolution*, 147.

⁶³⁹ Schmitt, *The Concept of the Political*, 37-38.

When we contrast Khomeini's Exodus-like revolution with Fadlallah's concept of popular movement and revolution in the mid-1980s, we see that the latter was less concerned with an uprising or a renewal than with reform and its implementation. Asking "How Do We Face the Issue of Change in the Nation? (*Kayf nawājihu qaḍiyyat al-taghayyir fī al-umma*)," he stressed:

Change must be subject to an integrated plan in terms of time, place, and people, as well as its means and goals. This is not a different style of revolution, in operations of change, from the style of movement from within institutions...⁶⁴⁰

According to Fadlallah, change can come from more than one source but its leaders must always take present conditions into consideration. Those who promote change must account for "time," "place," and, most importantly, "people." He asserts, "[t]he question presented by the modern [period] is a question of change within the nation, based on Islam..."⁶⁴¹ Nations or other communities might experience change in different ways based on their particular conditions while also remaining true to Islamic practice. Fadlallah adds, "the issue of revolution is not to demolish a corrupt reality, but to build a new reality that bears its ideology and aspirations."⁶⁴²

His conception of popular movement departed from Khomeini's by focusing on a future—a "new reality"—rather than an immediate revolutionary moment like Exodus. Despite using the Arabic word for revolution, *thawra*, Fadlallah's concept of revolution is, in truth, a reform project. Furthermore, Fadlallah did not attempt to establish or lead a new political community as Khomeini had. He attempted to

⁶⁴⁰ Fadlallah, *Al-ḥaraka al-islāmiyya*, 58.

⁶⁴¹ *Ibid.*, 57.

⁶⁴² *Ibid.*, 57.

propose a program for Islamic politics, which was largely overshadowed by Khomeini's popular uprising.

When he equated the shah to Yazīd and the Pharaoh, both enemies of God's message, Khomeini opened up a political space. This space allowed for commanding and forbidding's reform from a purely social-ethical concept, which initially prevented one to sacrifice life, progeny, or property, into a revolutionary weapon against a regime that places personality above God's sovereignty. Doing so, Khomeini advocated for popular action, however momentarily, to become an act of God—an act that destroys a political order to establish an order that abides by divine law. If revolution is successful only with popular participation and if it succeeds, we might then argue that this divine act is a moment of popular action for which there is no alternative.

Fadlallah, on the other hand, avoided promoting a spontaneous popular movement. He advocated deliberate planning, disallowing for revolution as divine intervention, and therefore disallowing for revolution completely. Additionally, because of Fadlallah's denial of such a divine act, as well as his refusal to draw biblical analogies to popular movement, his political thought generally avoided a serious engagement with constitutionalism as law and order; his engagement with constitutionalism is mostly an engagement with communal ethics and the limits of political conduct instead of an engagement with state forms and institutions. As such, his engagement with state forms and institutions does not involve an in-depth engagement with constitutionalism. He discussed instead how institutions relate to rulership and decision-making. This corroborates the above claim that Fadlallah was

concerned primarily with general reform, almost completely outside of sovereign norms and independent of state institutions.

Fadlallah's concern with reform outside of sovereign norms—or a state—is perhaps a result of his deep cynicism about the Lebanese situation because, as he explains:

In Lebanon there was no sign of a plan for change. All that exists are regional or international schemes, imposing on individuals, parties, and movements [limited] movement within a specific political and security circle to achieve a special situation through their participation in the government, in relation to a person, to a sect, or to private political circles... far from any solution for the problem...⁶⁴³

The inability to depart from the established political, social, and security norms in Lebanon is arguably Fadlallah's greatest obstacle to change. Each sector operates according to its own interests and therefore no one makes a decision outside of the norms and limits in which they function. Thus, despite the idea of “deviant tyrannical rule (*al-ḥukm al-ṭāghī al-munḥaraf*)”⁶⁴⁴ and its clear connotation of one who has abandoned right and promoted wrong, Fadlallah nowhere invokes commanding and forbidding as a serious duty. *Maṣlaḥa*, on the other hand, is abundant in Fadlallah's writings on rulership. He argued, for example, that the “unity of ruler and government,” instead of a “multiplicity” of these, is for the highest benefit (*maṣlaḥa*) of Islam. This means, as he explains, that there must be general authority for the *faqīh* (“*wilāyatuhu al-‘amma ḍarūratun Islāmiyya...*”) instead of special authority in certain situations for which he is authorised and of which he is knowledgeable.⁶⁴⁵

⁶⁴³ Ibid., 59.

⁶⁴⁴ Ibid., 58.

⁶⁴⁵ Ibid., 305.

This is to argue, in other words, that those in current power cannot be legally bound by the duty to command and forbid let alone promote it, because they are instead bound to their own interests through the functions of the Lebanese state. But where Khomeini's popular movement fulfilled commanding and forbidding's utmost potential, it appears for Fadlallah squarely and wholly the prerogative of a community, outside of a state, and perhaps ideally without an authority like Fadlallah to author the duty in a *risāla*.

In any case, Khomeini would lead a political community away from tyranny as Moses had done for the Israelites. Careful to avoid any sacrilegious parallels, Khomeini described the *fuqahā'* as heirs to the prophets' missions, thus positioning himself as the rightful leader of his political community. He stated:

It is obvious that Moses himself was one of the prophets of the Children of Israel, and that all of the functions that existed for the Most Noble Messenger (peace and blessings be upon him and his family) also existed for Moses, with a difference, of course, in rank, station, and degree. We deduce from the general scope of the word "rank" in this tradition, therefore, that the same function of rulership and governance that Moses exercised exists also for the fuqaha.⁶⁴⁶

Though it might be argued that Khomeini eventually replaced the shah as sovereign, among the fundamental differences between the two is that Khomeini garnered mass support with appeals for popular participation in order to propel him to the position of revolutionary leader. Chehabi tells us, "in his justification of clerical rule, Khomeini first quotes a tradition to the effect that the '*ulema* are the heirs to the

⁶⁴⁶ Khomeini, *Islam and Revolution*, 108.

Prophet—who, we might add, was also a worldly ruler.”⁶⁴⁷ Khomeini’s popular appeal was essential to his function in the Islamic Republic because of the *faqīh*’s dependence on popular support, as previously discussed. And unlike Imamate symbolism or Prophetic *ḥadīth* and Sunna, Exodus functions as an allegory for mass mobilisation. But Khomeini’s call for mass mobilisation, while effective in politicising the global Muslim community and changing Iran’s immediate socio-political condition, nevertheless failed to produce meaningful governmental change beyond Iran. The failed Islamist siege of Mecca and takeover of the United States’ embassy in Pakistan on 20 and 21 November 1979, respectively, are two examples.

In the mid-1980s, examining “The Islamic Revolution and The Reaction of Publics: The Problem of Intellectual and Political Backwardness (*Al-thawra al-islāmiyya wa-infa‘āl al-jamāhīr: mushkilat takhalluf fikrī wa-siyāsī*),”⁶⁴⁸ Fadlallah no doubt accepted that throughout various countries “the Islamic awakening has turned [these] publics into a formidable force, sweeping [aside] all obstacles it encounters.”⁶⁴⁹ He further acknowledged that the Iranian Revolution captured the imagination of Muslims and inspired them to action. Fadlallah gave Khomeini credit for transcending the limits of popular political movement that the former previously decried.

⁶⁴⁷ H. E. Chehabi, “Li Kulli Fir‘awn Musa: The Myth of Moses and Pharaoh in the Iranian Revolution in Comparative Perspective,” in *Brandeis University Crown Center for Middle East Studies Crown Papers*, no. 4 (November 2010): 1-42, at 16.

⁶⁴⁸ Although “*al-jamāhīr*” is commonly translated as “masses,” “publics”—from *jumhūriyya*, or republic—appears to be better-fitting for two reasons. First, he is specifically discussing different geographical and political spaces in which Muslims exist outside of Iran, not a group or groups of people in the same arena. Second, these groups are, in Fadlallah’s terms, “awakened” and are able to articulate their politics regardless of their success. Faḍlallah, *Al-ḥaraka al-islāmiyya*, 296.

⁶⁴⁹ *Ibid.*, 296.

Fadlallah believed that the “Islamic awakening” inspired Muslims to act with the promotion of a new revolutionary paradigm. But he also believed that Khomeini’s revolution was not a truly popular movement because its public narrative did not address Muslims beyond Iran in a manner that allowed the transnational Muslim community to implement revolutionary ideals. Fadlallah explained:

[this is because some sites of ‘revolution’] existed in the fog of intellectual and political backwardness, at a level where they could not understand the meaning of Islam, in terms of the life and constitution of a nation (*umma*). As such, units instead of the whole dictated Islamic action for change.⁶⁵⁰

Fadlallah critiqued the failure to internationalise a revolution despite its vast ideological appeal. It succeeded in Iran because certain elements facilitated revolution, “beginning with reformist slogans and not revolutionary slogans.” But it failed elsewhere, according to Fadlallah, because of its objective program,⁶⁵¹ meaning that it never accounted for histories that diverged from its own. In reality, Fadlallah advocated reformism, endeavouring to unite a splintered and multi-religious Lebanese community which would achieve its own brand of sovereignty that is different from Iran’s, a plan for which he had never formulated. He encouraged Muslims in different publics to embrace their subjectivity instead of attempting to emulate Khomeini’s program. Conversely, Khomeini propagated unity and revolution through appeals to popular and public will by targeting what he defined as the personal and anti-popular regime of the shah.

Fadlallah further explained how his idea of “public” might relate to *wilāyat al-faqīh* in order to promote political transparency and clarity. He explained:

⁶⁵⁰ Ibid., 296.

⁶⁵¹ Ibid., 297.

The idea of the ‘line of the imam’ or the ‘line of the leader’ may be acceptable if there is a clear sense of what the leader plans and the approach he intends to take to accomplish that plan, presenting a comprehensive methodological idea to the public [*jumhūr*]. In practice, however, the situation is far from that. We are facing scattered ideas, found in stump speeches or political/social meetings and interviews during special events or accidental circumstances. The ideas presented in the forums result in conflicting interpretations, as each group understands the ideas differently.⁶⁵²

Although Fadlallah seems to have approved of “the line of the imam,” the above statement represents a complete break with Khomeini’s political theology. Fadlallah subordinated the tradition of Imamate authority that Khomeini embraced to one that ascribes primacy to the public (and profane) sphere over the sacred. Doing so eschewed a sectarian explanation of Imamate authority perhaps indicating an effort to resonate with Muslims and non-Muslims alike. In turn, the public transparency that Fadlallah promoted might theoretically legitimise a Guardian Jurist in the Lebanese context, only within a model that redefines “public” more pluralistically and inclusively than Khomeini intended.

Fadlallah was likely aware of the contention on the terms “public” and “republic” during the Islamic Republic’s Constitutional drafting. On the one hand, Ayatullah Muntazirī and Muḥammad Ḥusayn Ḥusaynī Tihrānī (d. 1995) proposed that the President of the Republic should be a Shi‘i *mujtahid*. For Tihrānī, all three branches of government should be collapsed within the office of *faqīh* and “republic” should have no bearing on the character of the Islamic State.⁶⁵³ On the other hand, Ayatullah Sharī‘atmadārī (d. 1986) asserted that sovereignty belongs to the people and advocated for *wilāyat al-faqīh*’s peripheral role to that of the *sharī‘a* in matters of

⁶⁵² Faḍlallah, *Al-ḥaraka al-islāmiyya*, 361. Citation in Aziz, "Fadlallah and the Remaking of the Marja‘iya," 206, where Aziz translates *jumhūr* as “masses” instead of “public.”

⁶⁵³ Schirazi, *The Constitution of Iran*, 30-31.

legislation.⁶⁵⁴ As such, the constitutional deliberations focused less on the political participation of Iran's public and instead on the inclusion the office of *walī al-faqīh* in the Constitution, as well as ways by which to reconcile the role of a supreme leader with a republican constitution.

What is striking about Fadlallah's formulation of *jumhūr*, however, is the definition of the leader's duty toward his or her constituency in a *jumhūriyya* (republic). Far from a liberal democratic understanding of public and republic, in which people participate in open elections for all levels of office, Fadlallah advocated for increased transparency toward a diverse political public without defining the type of transparency or the mechanisms for its implementation. At the same time, transparency and "establishing a basis of truth and justice" for governance figures once again more prominently in "Islamic Action and Legal Methods"⁶⁵⁵ than does commanding and forbidding.

Khomeini, on the other hand, embraced popular will to promote Islamic government as the most exalted form of government.⁶⁵⁶ Doing so, he was able to bolster the office of the *walī al-faqīh* by establishing its importance for safeguarding freedom of political participation and preventing tyranny. Keeping in mind Salvatore's notion of "connective justice," Khomeini articulated the ideals of a justice system that purports to serve the common good by preventing tyranny, on the one hand, while advocating revolution as an element of divine sovereignty on the other.

⁶⁵⁴ Ibid., 48.

⁶⁵⁵ Fadlallah, *Al-ḥaraka al-islāmiyya*, 266-267.

⁶⁵⁶ Khomeini, *Islam and Revolution*, 66.

Although Khomeini's assertion, that law is the ruler in Islam, was already discussed in relation to constitutional checks and balances, there is another perspective that must be discussed. As Khomeini writes in his *Vilāyat-i faqīh*, law not only limits rule and conduct but also ensures a nation's freedom:

Law is actually the ruler; the security of all is guaranteed by the law, and law is their refuge. Muslims and the people in general are free within the limits laid down by the law; when they are acting in accordance with the provisions of the law, no one has the right to tell them, "Sit here," or "Go there."⁶⁵⁷

For Khomeini, law is a means to safeguard liberty and security. Law, as previously argued by Khomeini, is an institution to which a nation answers, and in turn to which the Guardian Jurist answers. Law is neither dictated nor amended by the nation but rather by divine injunction found in the Qur'ān and Sunna. Thus, Khomeini explains, majoritarian rule is impossible and indeed unjust:

[Islamic government] is not constitutional in the current sense of the word, i.e., based on the approval of laws in accordance with the opinion of the majority. It is constitutional in the sense that the rulers are subject to a certain set of conditions in governing and administering the country, conditions that are set forth in the Noble Qur'an and the Sunna of the Most Noble Messenger... Islamic government may therefore be defined as the rule of divine law over men.⁶⁵⁸

Neither European constitutionalism nor parliamentary rule, according to Khomeini, is supremely just. The most just system is instead one in which the jurist mediates between divine will and the nation. While the Constitution is essential to the Islamic Republic, this codified law belongs only to God, not the nation. However, the jurist as mediator between God and nation, rather than ultimate sovereign, is precisely

⁶⁵⁷ Ibid., 79.

⁶⁵⁸ Ibid., 55.

what allowed Khomeini to govern with *maṣlaḥa* and to adopt politically advantageous positions for an Islamic state vis-à-vis the *sharī'a*.⁶⁵⁹

As such, justice in Khomeini's Islamic Republic is not a product of majoritarian rule or democratic accountability. If the referendum-ratified constitution in December 1979 illustrates anything, it illustrates the popular affirmation of the Islamic Republic's leadership and government rather than a democratic system. Justice is instead delivered through God's law, which is in turn established by Muslims, to which the Guardian Jurist is accountable and for which he serves as interpreter.

But the problem of national sovereignty, both enshrined in the Constitution and demonstrated by referendum, poses the following question: How can the Constitution of the Islamic Republic, itself a product of referendum, uphold national sovereignty without being democratic, majoritarian, or the representative of national will? The previous discussions answer aspects of this question. Instead of functioning as national will, as in the United States, the Constitution of the Islamic Republic—at least as Khomeini sees it and has thus far been explained—functions as God's earthly limits for both politics and ethics. Therefore, while “this Constitution was approved by the elected representatives of the people and then submitted to a popular vote in the referendum...,” as he explains, it is neither majoritarian nor democratic.⁶⁶⁰

That national sovereignty is a product neither of majority nor democratic rule means that national sovereignty is based not on the right of a polity to establish laws

⁶⁵⁹ Khumaynī, *Vilāyat-i faqīh*, 71.

⁶⁶⁰ Khumayni, *Islam and Revolution*, 338.

according to its interest—leaving room for the potential democratic destruction of sacred law—but instead based on its obligation to hold government accountable to the sacred principles of justice. Although referendum is a characteristic of majoritarian governments in the European Union, the constitutional referendum in Iran’s case paradoxically rejects majority rule by ensuring national consensus of law that disallows for citizens to vote on an exception to that very law. But referendum is possible only with political limits. Fadlallah sets no concrete political limits for the state in his later formulation of *dawlat al-insān*, as discussed in the next and final section.

Yet, so too was Fadlallah opposed to majoritarian rule. In a Friday sermon delivered in 1980, well into the Civil War, Fadlallah asserted that the corrupt Lebanese government is responsible for the war. This corrupt government was responsible, he argued, because it propagated the colonial tradition of majoritarian politics. His explanation is worth quoting at length:

Our problem in Lebanon has not arisen from the Sunnis, nor is it a problem that happened before... The one responsible for our problem and their problem, when we assimilate our rights and their rights, and the rights of other [religious] communities, is a corrupt system that is not based on a solid foundation of social justice and duties. [It is] instead based on the colonial foundations which were put in place by colonisers in what they called a ‘national pact’ that subjected the functioning country to fear, the majority’s fear of the minority and the minority’s fear of the majority...⁶⁶¹

He argued elsewhere that majority and minority fear of one another manifests as political and social worth. Distinction in personality or thought within a society serves the ends of the majority whereas low value work, thought, or personality serve the ends of the minority. Fadlallah argues, through the Qur’ān, against the

⁶⁶¹ Faḍlallah, *Min aḥl al-Islām*, 161.

establishment of a majority and minority. The Qur’ān states that the majority is not learned or wise, and their ideas facilitate societal and political corruption and deviation.⁶⁶² However, he also proposes in the same 1980 sermon that “humanity is the issue,” meaning that one can serve the nation from afar without any honour or distinction, or one can serve his/her own ambitions and aspirations at the expense of the nation.⁶⁶³

But how does he reconcile majority powers in certain matters within the Islamic Republic given his distaste for majoritarian rule? As previously discussed, voting according to Fadlallah is sanctioned by the ruling *faqīh* and based on *maṣlaḥa* as the latter interprets it.⁶⁶⁴ The majority in the Islamic Republic votes on the Constitution, elects parliamentary members, and elects the president, but these institutions have no legitimacy without the approval of the *faqīh* because the *faqīh* curbs the unjust practice of personal or majority rule. In other words, as Fadlallah explains, “the *faqīh* may see that it is for the *maṣlaḥa* of the nation (*umma*) to consult with them in what he wants to implement,” meaning, that “he has the right, as the deputy of the imam,” to form a nation that will serve the highest good.⁶⁶⁵

Furthermore, and much later in his *Al-masā’il al-fiqhiyya*, Fadlallah argued:

Islam has preserved the rights of minorities in the Islamic state, allowing them to practice their rituals in a way that does not contradict the general Islamic ideology, such as drinking alcohol in public and selling it on the market, or doing something that is openly contrary to Islamic morals and values⁶⁶⁶

⁶⁶² Faḍlallah, *Al-ḥaraka al-islāmiyya*, 330.

⁶⁶³ Faḍlallah, *Min ajl al-Islām*, 162.

⁶⁶⁴ *Ibid.*, 45.

⁶⁶⁵ *Ibid.*, 44.

⁶⁶⁶ Faḍlallah, *Al-masā’il al-fiqhiyya: al-‘ibādāt*, 504.

Although Fadlallah rejected liberal democracy, he nevertheless encouraged greater attention to and incorporation of popular opinion. Take Fadlallah's concern for the need of Islamist movements to appeal to popular consciousness:

...It is natural that the Islamic movement plans to penetrate the public consciousness by provoking issues that represent grand problems... whether in a sentimental way that influences emotion, or in a rational way that mobilises minds, or in ways that combine the mental side with the emotional side...⁶⁶⁷

Like Khomeini, Fadlallah appealed to the public. But instead of deploying concepts such as freedom, justice, and independence to sway popular opinion, Fadlallah advocated a more active role for the public as he had previously advocated for increased transparency; he appealed to participation and equity, in other words, as opposed to legal benefits. For example, he encouraged a less central role for the Guardian Jurist and a greater role for advisory committees,⁶⁶⁸ as well as constant attention to popular opinion.⁶⁶⁹ Although Fadlallah's emphasis on popular opinion in governance does not entail a consideration of freedom, justice, and independence of the brand that Khomeini addressed, Fadlallah does consider these three ideas important in other discussions. As will be examined, he stresses freedom and justice in his explanation of *dawlat al-insān*.

Without advocating Western systems of democratic rule, Fadlallah nevertheless desired for Lebanon a system in which a community involves itself in government without sacrificing certain ethical principles. He encouraged a society in which sectarianism and group interest does not take precedence over ethics and one in which ethics do not contradict political reality. He tells us, "Islam believes that ethical

⁶⁶⁷ Fadlallah, *Al-ḥaraka al-islāmiyya*, 335.

⁶⁶⁸ Fadlallah, *Min ajl al-Islām*, 23.

⁶⁶⁹ *Ibid.*, 335.

values must challenge and change reality's image so that man does not live duplicitously."⁶⁷⁰ Whichever form an Islamic system might take, for Fadlallah, it would be closer to realising his ethical ideal than a Marxist, Socialist, or liberal state because "Islam has proven itself, even to Christians, for fourteen centuries."⁶⁷¹ It has proven itself, not by providing liberal democracy's popular political participation, but by providing justice. "I imagine," Fadlallah explained, "that Islam can provide justice for all humans... we advocate [Islam] as we advocate any non-religious solution to human problems. Therefore, Islam is not a proposal for Muslims but one for all people."⁶⁷² And here we have the potential beginnings of his *dawlat al-insān*.

As addressed in the introduction, commanding and forbidding appears to lose its prominence in Fadlallah's writings on governance in the mid-1980s, especially vis-à-vis *wilāyat al-faqīh*. His longest examination of the duty as an ethical principle for communal self-governance is in *Mantiq al-quwwa*,⁶⁷³ published several years before the Iranian Revolution and before Fadlallah's presently discussed writings. Justice and deviation become the dominant ethical concepts to undermine the role of the *faqīh* in Khomeini's idea of revolution, which occurs globally. Furthermore, Khomeini historicised popular will to promote ethical and legal consensus. He did so against the shah and Western conceptions of popular sovereignty in order to incite rebellion or revolution through Exodus. Fadlallah's attention to popular opinion, however, shifted power from the hero of Khomeini—as Moses—to the body of a heterogeneous public. But is this heterogeneous public Fadlallah's sovereign?

⁶⁷⁰ Surūr, *Al-'allāma Faḍlallah*, 103.

⁶⁷¹ *Ibid.*, 103.

⁶⁷² *Ibid.*, 104.

⁶⁷³ Discussed in chapter one.

Wilāyat al-faqīh or Dawlat al-insān?

Perhaps Fadlallah's most interesting challenge to Khomeini is his formulation of *dawlat al-insān* (state of humanity). Fadlallah's neologism restructured the debate on sovereignty in Islamic political thought by presenting a new model for the sovereign and the state. Although the idea of *insān*, as a multi-religious and ethically superior community, was present in Fadlallah's writings for years, *dawlat al-insān*, first proposed on 3 June 1988, had two implications: it recast Khomeini's concept of *wilāyat al-faqīh* while challenging a popularly held ontological view in Imamate thought. Although the previous sections of this chapter deal with Fadlallah's thought primarily during Khomeini's life, this section refers mostly to the era after Khomeini's death.

It is quite possible that Fadlallah's idea of *insān* was taken from al-Ṣadr's idea of *khilāfat al-insān*, which promoted man's right to rule over himself with the guidance of an elected *marja'* and *shūrā* instead of under their direct leadership.⁶⁷⁴ But unlike his erstwhile peer who advocated for Islamic revolution in Iraq and supported Khomeini's revolution, Fadlallah eschewed explicitly sectarian terms like *khilāfat* or *wilāyat*, which al-Ṣadr and Khomeini respectively favoured. Fadlallah was concerned with social duties and their impact on movement and state more than he was with state and government's influence on society. As we will see, when he finally advocated for *dawlat al-insān*, the extent of divine authority is only in the paradigm of Imamate and Prophetic ethics instead of in Imamate or Prophetic infallible rule.

⁶⁷⁴ Jaffar al-Rikabi, "Baqir Al-Sadr and the Islamic State: A Theory for 'Islamic Democracy'," *Journal of Shi'a Islamic Studies* 5, no. 3 (2012): 249-275. I would like to thank Vidar Skretting for his perspective on this reference.

In Fadlallah's 3 June 1988 Friday sermon, entitled "Our Battles for Islamism (*Ma'ārikanā li-l-Islāmiyya*)," he mapped two of the major battles in early Islamic history from *Badr* to *Uḥud*, both in 624, in order to argue that investing in victory and studying defeat defines positive human experience.⁶⁷⁵ Despite the defeat of the Prophet's armies against the Meccans at *Uḥud*, Fadlallah contended that God owes nothing even to those who believe in Him and abide by His law. Defeat, even in the presence of the Prophet, is a test meant to mitigate weakness among believers, and in turn to encourage the fulfilment of God's will. "The human experience" is, Fadlallah says, "a school for [humanity] in all areas of life."⁶⁷⁶

If defeat never occurred for pious Muslims, Fadlallah argued, the impetus to improve oneself, one's community of believers, and to endeavour to change disbelieving hearts would cease. Defeat is therefore a divine tool for communal self-reform, which sometimes necessitates violence.

...if God wanted to make people a single nation and create them all believers as He creates the human eyes and lips, [as he] creates human faith and not fear, then the prophets would not need to call and [perform] *jihād*, and jihadists would not need *jihād*, and people [would live as] believers. But God wanted the prophets to say their word...⁶⁷⁷

Lessons of defeat, presented in *Sūrat Āl-i 'Imrān*, served as Fadlallah's model for tackling contemporary problems in Muslim and Lebanese society vis-à-vis Israel and the Civil War. But facing defeat, with or without violent *jihād*, necessitates an ethical decision entailing belief and obligation toward other humans; God presents humans with a choice to follow their obligations. "In [the Qur'ān] and the Sunna," says

⁶⁷⁵ Fadlallah, "Ma'ārikanā li-l-Islāmiyya," in *Al-jum'a*, 269-270.

⁶⁷⁶ *Ibid.*, 269-270.

⁶⁷⁷ *Ibid.*, 271-272.

Fadlallah, “are the issues of right and wrong for the *mujāhidūn* to [perform] *jihād*,” and to fulfil their obligations regarding killing, wounding, triumph, or even defeat.⁶⁷⁸

All of the above conditions—killing, wounding, triumph, and defeat—are not arbitrary but must be studied, Fadlallah proposed, in order to get closer to the faith (*al-imān*). But this faith, for Fadlallah, was a matter of secular ethics within a community. It is not a matter of man’s ethical obligations in his unilateral relationship with God (expressed through prayer or adhering to monotheism, i.e., *al-‘ibādāt*). Indeed, among these secular ethics and obligations is martyrdom, which is not necessarily submission to God but a sacrifice in the service of one’s community. Fadlallah qualified martyrdom not with numbers or volume—i.e., as a spectacle—but instead as a testament to one’s community, a testament which culminates on the Day of Judgement.⁶⁷⁹

At the same time, Fadlallah addressed young people in southern Beirut, southern Lebanon, as well as Amal and Hizbullah (two parties that often fought one another). He emphasised that martyrdom should not be manipulated by, or in the service of, foreign and domestic initiatives, such as the post-Civil War security plan and Israel’s occupation of the south; these initiatives are predicated on violence as an inevitable Lebanese condition and do not promote the best interests of Lebanon.⁶⁸⁰ He instead advocated for a Lebanese community—without political distinctions, as religion, race, or other—to free itself from the designs, attacks, and interests of Israel and foreign powers in the post-Civil War period, that is, to establish sovereignty.

⁶⁷⁸ Ibid., 273.

⁶⁷⁹ Ibid., 275.

⁶⁸⁰ Ibid., 281-282.

Advocating this brand of community, he asked: “The people who are silent in front of the occupation are people who will continue to live long under the occupiers. Do you want your children to live under the Israeli occupation?”⁶⁸¹

Marking his first official description and promotion of *dawlat al-insān*, he answers his question. Fadlallah’s premise for *dawlat al-insān* begins with those segments of Lebanese society who ponder solutions to the “Lebanese problem” without talking about Lebanon, the South, or Beirut’s management, “which are state, regional, and local problems and must be united for the people’s politics... on more than one level.” But this proposal is also “for all [kinds of] Muslims, whether as a class who do not [practice] Islam or those who believe in a certain strand of Islam, or other.” He continued:

The Islamic class is between two boundaries and we say for this group: Why not unite with a common denominator? If you want to face rulership or face another military [power], come and agree on the basis of a project. If you could not change the Lebanese situation and system generally, at least [we] can presently include Lebanese Muslim and Christian humans so that Lebanon will be a state of humanity. We advocate Islam but if it cannot be... then come and let us advocate for the state of humanity.⁶⁸²

Humanity, in Fadlallah’s *dawlat al-insān*, is based not on sect but on a nation in which there is “freedom and justice.” His address to Muslims within two boundaries is most obviously a call to unify Sunnis and Shi‘is, but it is also an effort to reconcile Amal and Hizbullah—those Islamists from the same sect who fight one another. Freedom and justice, like unity and reconciliation, must be based on common interests if not national or religious brotherhood. By freedom, Fadlallah means freedom of opinion in public space and freedom from manipulative “colonial” forces,

⁶⁸¹ Fadlallah, “Ma‘ārikanā li-l-Islāmiyya,” in *Al-jum‘a*, 282.

⁶⁸² *Ibid.*, 282.

like Israel, who intend to divide and conquer. By justice, on the other hand, he means a guarantee not to be occupied by those who might harm the nation; he advocated the strength to resist those who might desire to do so.⁶⁸³

Fadlallah's Battle for Islamism was thus not a battle that ends with Islamism but instead a battle for the ethical integrity of Islamists, like Amal and Hizbullah, who so often fought against each other while claiming the mantle of resistance. Like the battles of *Badr* and *Uḥud*, in other words, it was time for Muslims to learn from their defeat—a defeat in Civil War and Israel's occupation, and shared by the entire Lebanese nation. Learning from this defeat might therefore enable the construction of a new paradigm for governance and resistance.

One week later, in a subsequent sermon entitled “Al-Imām al-Ṣādiq wa-mafhūm al-tashayyū‘ (Imām Ṣādiq and the Concept of Shi‘ism)” on 10 June 1988, we find a resurgence of commanding and forbidding where Fadlallah links the duty to his concept of humanity. In this sermon, Fadlallah, like Khomeini, argued against the separation of religion and politics in order to counter the claim of Western and westernised Lebanese politicians: that religion and state should be separate. Fadlallah presented the argument of his ideological foes in the following way: that softening the relationship between religion and state allows for greater piety and dedication to God and Islam:

Islam, as it was in the days of the Ottomans, which was in a pact with the colonisers, was polite, good, and moderate. Muslims were saying to each other: ‘be patient and do not stand against the oppressive forces’. They were bad. People lived on the basis that religion does not enter politics... It was

⁶⁸³ Ibid., 283.

said that the more people moved away from the politics of the people, the more pious belief [was directed] to God.⁶⁸⁴

Fadlallah argued against the above using two Imams to symbolise humanity and ethical reform, respectively, which, together demonstrate a resurgence of commanding and forbidding in his thought. According to Fadlallah, Imām Ja‘far al-Şādiq and Imām ‘Alī respectively exemplify that, on the one hand, humanity allows for freedom of opinion for all in order to promote an openness toward God and tolerance. Humanity, defined in part as freedom of opinion in public space, most obviously resonates with Fadlallah’s previously discussed advocacy of freedom as a counterpart to justice. Imām al-Şādiq thus exemplifies humanity, according to Fadlallah, because of his tolerance. This tolerance in turn prevents hatred based on difference of sect, religion, or opinion fomented by internal and external manipulation:

I do not find anyone [so] worthy of the title of humanity as Imām al-Ja‘far al-Şādiq because he was living his humanity with all his freedom and with all the capacity of creation and with all the freedom of opinion. He even gives it to those who differ with him in faith because he wanted people to open up to God... Because humanity bears in its existence a connection to the House of the Prophet, there is a call to Islam through [Islam’s] ethics and through its openness for all humans... This commandment is... for all those who live in the Islamic arena... because international intelligence [agencies are] trying to incite hatred among different Muslims in their sect or within the same doctrine.⁶⁸⁵

‘Alī, on the other hand, illustrates not the epitome of humanity but instead its necessary counterpart: the value of Islam’s relationship to politics. ‘Alī demonstrates this relationship, Fadlallah contends, by battling extremism, confronting deviation, and implementing just policies. In other words, ‘Alī’s attempts to confront ethical deviation mitigated hatred based on difference along with external manipulation. But

⁶⁸⁴ Faḍlallah, “Al-Imām al-Şādiq wa-mafhūm al-tashayyu‘,” in *Al-jum‘a*, 293.

⁶⁸⁵ *Ibid.*, 286.

his ethical positions were primarily informed by his political reality, and these positions later influenced his son, Ḥusayn's efforts for reform:

[Ḥusayn said]: 'I want reform in a serious nation, I want to command right and forbid wrong'; and of you people who speak in his name now and follow Yazīd in [your] position and political relations, and are not with Ḥusayn except to say: 'O people, come to Allah and the Messenger'. But who of you people take his words [seriously]? If Ḥusayn were present, [people would say] that Ḥusayn was not popular and that Yazīd was the one who was popular. If 'Alī were present, [people would say] that he does not have the public and Mu'āwiyya is the one who has the public [popularity] because Mu'āwiyya is the one who mastered the art of false politics while 'Alī was the Yazīd of sincere politics.⁶⁸⁶

Different from his exploration of commanding and forbidding in *Manṭiq al-quwwa*,⁶⁸⁷ Fadlallah established with his above pronouncements a basis for just government not in Imamate or Prophetic authority but in Imamate and Prophetic ethics, as well as human authority. Despite immediately imploring his audience not to "think that I am presenting these issues for you for in the way Lebanese politics [is presented],"⁶⁸⁸ his argument nevertheless necessitates commanding and forbidding's intimate involvement in politics and thus a distinct method for good governance. But without sincerity, tolerance is impossible. This position functions as a fundamental tenant of Fadlallah's *dawlat al-insān*. The above also marks a shift in his thought because despite the ubiquity of Prophetic and Imamate ethics in Fadlallah's writings, the idea of "human" authority in politics and governance was absent from his *Manṭiq al-quwwa*. This is to argue, in other words, that he advocated communal self-governance and various forms of humanity at different times but never a state (neither with "*dawla*" nor "*wilāya*") until 1988 when he presented humanity as the historical source of authority.

⁶⁸⁶ Ibid., 294.

⁶⁸⁷ See Chapter One.

⁶⁸⁸ Faḍlallah, "Al-Imām al-Ṣādiq wa-mafhūm al-tashayyū'," *Al-jum'ā*, 294.

Khomeini also appealed to a brand of humanity at various moments in his thought. In his “Last Will and Testament,” for example, he asserted, as Fadlallah had, that he wanted “to follow the great Imams and the political, social, economic, and military culture of this great guide of humanity.” Doing so, he argued, requires adherence to traditional jurisprudence, which, contra Fadlallah’s claims, “is the manifestation of the Prophetic and Imamate school and the guarantor of the enhancement of nations...” But he warned his audience to “beware that one deviant step would mean the prelude to the corruption of religion, Islamic ordinances and the divinely just and righteous rule.”⁶⁸⁹

To be sure, Khomeini defined “humanity (*insāniyyat*)” years earlier in his *Vilāyat-i faqīh* as a set of duties and limits on sacred authority. The idea of *wilāya* was embedded in his understanding of humanity in all its forms. “By ‘authority’,” argued Khomeini, “we mean government, the administration of the country, and the implementation of the sacred laws of the shari’a.” And all of these affairs constitute a “difficult duty but do not earn anyone extraordinary status or raise him above the level of common humanity.”⁶⁹⁰ The relationship of humanity to Prophetic authority is, then, “so that men’s lives may be ordered and arranged on the basis of just social relations and true humanity may be established among men.”⁶⁹¹

⁶⁸⁹ Imām Khumaynī, “Matn-i kāmīl-i vaṣīyatnāma-yi ilahī-yi siyāsī Imām Khumaynī,” 4-5. URL:

<https://www.kntu.ac.ir/dorsapax/userfiles/file/BasijKarkonan/vasiat.pdf>.

⁶⁹⁰ Khumayni, *Islam and Revolution*, 61-62.

⁶⁹¹ *Ibid.*, 77.

According to Sajjad Rizvi, Khomeini's emphasis on *wilāya* represents a resurgence of *walāya takwīniyya*, a theory disseminated by Safavid thinkers like Mullā Ṣadrā that proposed “absolute cosmic authority for the Imams.”⁶⁹² Different from *wilāya*, which is best understood as that which is governed (or a state), *walāya* most closely resembles authority (or the authority to govern). Rizvi suggests that, following Mullā Ṣadrā, this theory now dominates the way Imamate scholars understand the ontological and theological role of the Imams as “the central mode through which God was manifest in the plethora of the *ahl al-bayt* (the House of the Prophet) through and beyond history...”⁶⁹³ This is not to suggest that God unilaterally allows history to unfold. It is instead a proposition that the authority and power to move history forward with a political decision, by a leader or other, is itself a miraculous act. This perspective of divine authority, in other words, allowed Khomeini to define humanity as a reflection of God's will.

Fadlallah, however, understood the meaning and domain of *walāya* quite differently. If *wilāya* represents a space that is governed by one who possesses the authority to do so, then Fadlallah's *dawlat al-insān* turns Khomeini's understanding of authority, as it relates to state, on its head. As Reinhard Schulze explains, *dawla* underwent a conceptual transformation from the eighteenth century. During this period, the concept of *milla* referred to the Ottoman dynasty's religiously and ethnically diverse subjects while *dawla* referred to the Ottoman dynasty proper. Neither term necessarily entailed an Islamic character. In the next century, *dawla* came to represent the concept of nation, a community through which the Ottoman subject could “liberate itself from its submissive position [of subject] if it had an

⁶⁹² Rizvi, “Seeking the Face of God,” 392.

⁶⁹³ *Ibid.*, 394-396.

objective and undeniable common interest.” With this notion of a community that shares a common interest, *dawla* eventually served as a secular concept of state in which subjects identified themselves as citizens.⁶⁹⁴

Despite Fadlallah’s advocacy for Islamic principles of governance,⁶⁹⁵ his concept of *dawla* more closely resembles a community of diverse citizens with common interests. This position is illustrated by his definition of *dawlat al-insān*:

I think that the state of humanity is when we live... with all that is found within the word human, so one feels that he is alone in the universe. He exists, and the other exists by his side; as he has a right to the other, the other has a right to him. Each has his due right. And we know that God wanted us to reconstruct the earth on the basis of spiritual and social values.⁶⁹⁶

The above should remind of his exposition on men and women’s responsibility to each other—discussed in the previous chapter—about which he said:

...the generous verse that holds [female] believers accountable for commanding right and forbidding wrong as it holds [male] believers to it. And the issue rose in its inspiration of society to confirm Islamic human integration in *wilāya*. For where they are guides to each other in work, support and cooperation in all areas of participation, for which He said... (quoting Q.9:71).⁶⁹⁷

Most significant in the above text is Fadlallah’s delegation of *walāya*—as authority—to humanity. Unlike Khomeini, who wrested sovereignty from a monarch and placed a mediator between a nation and God with the office of *walī al-faqīh*, Fadlallah granted authority to “humanity,” thus removing the necessity for *walāya*’s

⁶⁹⁴ Schulze, *A Modern History*, 16-17. Schulze compares this with a similar conceptual evolution in Germany, “which also went through a change in interpretation from the ‘state’ as the ‘court of the sovereign’ (*Hofstaat*) to the civil state.”

⁶⁹⁵ Faḍlallah, *Al-jum‘a*, 283.

⁶⁹⁶ Muḥammad Ḥusayn Faḍlallah, “Al-Sayyid Faḍlallah fī muqābila ma‘ qanā (ANB) al-faḍā’iyya ‘an al-Najaf wa-l-sh‘ir wa-l-ibdā‘ wa-l-ḥiwār wa-l-mar’a,” *Bayynat* (24 June 2009). URL: <http://arabic.bayynat.org/DialoguePage.aspx?id=2391>.

⁶⁹⁷ Faḍlallah, *Ta‘āmmulāt*, 23.

ontology and Khomeini's custodianship. In other words, according to Fadlallah, clerics do not need to act as the purveyors of God's sovereignty, as Khomeini intended in his *Vilāyat-i faqīh*. For Fadlallah, humanity as a concept represents not only a collective community but also a set of values to be maintained by the sovereign state of *dawla*, which hermeneutically refers less to a domain of rulership and more to a conscious political body.

Indeed, Fadlallah criticised clerics in contemporary Islam for their "traditional condition that forces people to live out the problems of the past rather than the problems of the present and future."⁶⁹⁸ Yet, Fadlallah's criticism does not categorically target clerics. It instead targets their methods of jurisprudence. He maintained that clerics should focus on immediate issues with which the "people" are concerned so as to legitimately represent modern thought and practice in a community of Muslims. Because, according to Fadlallah, clerics are not necessarily the purveyors of God's sovereignty, humanity should guide their jurisprudential methods, not vice versa.

Fadlallah later explained the reasons and proper application for *dawlat al-insān*, almost completely eschewing references to theological precepts, focusing instead on global and local politics. With an allusion to Samuel Huntington's *The Clash of Civilizations and the Remaking of World Order*, Fadlallah explained that politics and power, rather than culture or civilization, are the problem. "We do not have a clash of civilizations," he declared, "only a dialogue of cultures. But the problem we have is a political conflict because every human being has the power to

⁶⁹⁸ Faḍlallah, "Al-Sayyid Faḍlallah fī muqābila ma' qanā (ANB)".

try to control the vulnerable...”⁶⁹⁹ Fadlallah’s assertion acknowledged that the cultural world intersects with the political world. Furthermore, the rhetoric of cultural incompatibility cannot explain modern global or local conflicts. The political world is instead that in which conflict occurs. For Fadlallah, like Khomeini, clerics who are solely concerned with problems of the past, or with cultural and theological precepts, are unable to address the needs of a community and cannot establish legitimate sovereignty.

Fadlallah’s solution is brief yet revealing. He proposed that humanity fulfils its potential and establishes *dawlat al-insān* only when the needs of a community are met through a dialogue of civilizations:

We have to try to educate humanity with a culture of human dialogue, and to civilize him to be a man and not be a beast. We now notice that the major countries, and the terrorists, and the extremists, who do not respect human life, became monsters in human form. We have to try to civilise human culture for human dialogue, to be humans and not monsters...⁷⁰⁰

It is essential to note that Fadlallah was not attempting to erase political or cultural differences, or conflict. Like Khomeini, Fadlallah’s concern was with imperial “power” and “control,” but the latter proposed an alternative to the Iranian model, which by this stage—in the early 2000s—he almost completely rejected. At the same time, promoting dialogue and freedom of opinion did not equate to a Western liberal model of cosmopolitanism with secular public spaces. He attested that his goals are “Islamic” and regard the eventual application of Islamic governance, but this is a peripheral priority.⁷⁰¹ Fadlallah instead attempted to universalise an

⁶⁹⁹ Ibid.

⁷⁰⁰ Ibid.

⁷⁰¹ Sankari, *Fadlallah*, 229.

innovative concept of Islamic sovereignty in which mutual respect within a community facilitates policy and establishes *dawla*.

Conclusion

This chapter demonstrated that in Khomeini and Fadlallah's ideas of *wilāyat al-faqīh*, commanding and forbidding when promoted as a purely social duty is marginalised. In Khomeini's Islamic Republic, commanding and forbidding, like *maṣlaḥa*, is subsumed into the function of political forms—in the Constitution—so that it might contour the decisions that the state and nation make when passing laws or establishing institutions. Despite once serving as a revolutionary tool for self-sacrifice, commanding and forbidding in the contemporary Islamic Republic lost some of its power as a weapon to check and balance a state. While *maṣlaḥa* remains in the domain of sovereign decision-making, it arguably reached its full potential as a tool to circumvent (or indeed implement) divine law—law as manifested in the Constitution and now perhaps bolstered by commanding and forbidding.

For Fadlallah, commanding and forbidding also lost some of its relevance in the Islamic Republic's post-revolutionary era. Where the duty served as a viable replacement for rights, enshrined in a constitution during the early days of the Civil War, Fadlallah later saw commanding and forbidding as a duty—promoted through popular rights—to participate in politics, such as voting, to shape state ethics. Ideas of justice versus deviation seemed to take temporary priority over social-ethical duties. *Maṣlaḥa*, on the other hand, was to be a result of exercising these rights and facilitating the limits of the *faqīh*'s political duties.

After Khomeini's death and toward the end of the Civil War, Fadlallah found cause once again to advocate for duties instead of rights. But these duties were intimately tied to governing ethics instead of to his idea of supreme communal self-governance in the 1970s. He thus reconciled the formation of a nation-state, even if not sophisticatedly formulated, with social and political responsibilities that foster a just society's integrity through a state.

Whether he had intended or not, Khomeini's legacy is reflected in current tensions between leadership and state. The March 2015 breakthrough in nuclear negotiations serves as an example of how *maṣlaḥa* has taken on a new role in the Islamic Republic by allowing the nation's leadership to circumvent state institutions. One consequence of this shift was to allow certain aspects of decision-making to be driven by elected officials rather than by government institutions. Where Khomeini arguably once held dual roles as both leadership and state, his inclusion of constitutional amendments that established the Expediency Council also set a precedent for *maṣlaḥa*'s priority in decision-making over certain institutional ethics, like those in parliament and the Guardian Council. While the nuclear negotiations needed Khomeini's initial approval, the apparent tension between institutions like the Expediency Council, the *walī al-faqīh*, and the parliament, on one hand, and those like the president and the Minister of Foreign Affairs on the other perhaps illustrates the reality that state institutions alone cannot make decisions outside the parameters of codified law. The nation's leadership, however, might possess the authority to do so if it suits national interest. Presently, *maṣlaḥa* triggers this tension with the importance that Khomeini placed on the common good and national interest above all other principles of governance.

Conclusion

Shortly after Fadlallah's death, the Iranian reformist journal, *Mihrnāma*, published a short piece on "The Father of Lebanon."⁷⁰² The article was written as a eulogy, painting Fadlallah in a favourable light and defining him as a cleric "before his time." It maps a few of Fadlallah's best-known social, political, and legal positions, which include his consultation with doctors when making legal judgements on related issues, his opposition to (or "non-belief" in) Mūsā al-Ṣadr's establishment of the Supreme Islamic Shi'i Council in Lebanon, and his efforts to reconcile the latter's feud with Muḥammad Jawād Mughniyya over their leadership of the Shi'i community in Lebanon. But perhaps the author's most profound illustration of Fadlallah is one of unfulfilled resistance and reform. As Fadlallah attempted in his sermon, "Ma'ārikanā li-l-islāmiyya," to mitigate internecine strife between Amal and Hizbullah, Fadlallah later said of Ḥasan Naṣrallah, with whom he had previously fallen out: "His flame is my flame, and the opposite case is also true."⁷⁰³ In other words, Fadlallah implored various political groups to sacrifice their conflicting Islamist ideals in order to pursue present reconciliation.

Although the author of "The Father of Lebanon" suggests Fadlallah's project was not successful in its attempt to reform, that this article was published in a leading journal—notwithstanding the unknown rates of readership—indicates the ayatullah's relevance to the Islamic Republic. Fadlallah's current relevance in Iran is unrelated to

⁷⁰² Majīd Murādī, "Pidar-i Lubnān: tika-hā-yi darbāra-yi ān kih Faḍlallah būd," *Mihrnāma*, no. 4 (2010): 18-19.

⁷⁰³ *Ibid.*, 19.

his challenge to *Vilāyat-i faqīh* but instead to his alternative vision of Islamist politics—one that challenged both Islamist tradition and Western politics.

Where Khomeini transformed traditional ethics into violent tools of resistance, that is, as a call for individual sacrifice as a communal duty, Fadlallah saw Imām Ḥusayn’s command to right and forbiddance of wrong as paradigmatic reform.⁷⁰⁴ Although Fadlallah did not categorically reject the possibility for violent self-sacrifice, as discussed in chapter one, his most significant political sacrifice was that of an Islamic state in Lebanon. In fact, this sacrifice might explain why he repeated his ostensibly empty “advocacy” of Islam when discussing *dawlat al-insān*. Fadlallah, in other words, used *maṣlaḥa* to delay the very Islamic state that might have served Islam’s highest interest (*al-maṣlaḥa al-islāmiyya al-‘uliyā*)—a phrase that Fadlallah deployed several times⁷⁰⁵—instead to serve humanity’s highest interest. Doing so allowed him to justify his expansion of the *sharī‘a* to apply equally to Christians, Jews, and even atheists.⁷⁰⁶

The implication is that Fadlallah salvaged his Islamist project of resistance, and thus Islamist principles, while at the same time refusing to promote the very politics that so often entailed an Islamic state. Subordinating these politics of sovereignty to an ethics of Islamist resistance, which still accepts possible violence with communal participation, demonstrates Fadlallah’s elusiveness to those in the West; how might one champion Islamist causes without the explicit promotion of

⁷⁰⁴ See chapter one.

⁷⁰⁵ See, for example, Faḍlallah, *Ḥiwārāt*, 537-39; Muḥammad Ḥusayn Faḍlallah, *Tafsīr min waḥī al-Qur’ān* vol. 7 (Beirut: Dār al-malāk, 1998), 372; Muḥammad Ḥusayn Faḍlallah, “Istiftā’āt: mafāhīm wa-mawāḍī‘ siyāsiyya” Bayynat (N.d.). URL: <http://arabic.bayynat.org.lb/ListingFAQ2.aspx?cid=29&Language=1>.

⁷⁰⁶ Faḍlallah, *Al-masā’il al-fiqhiyya: al-‘ibādāt*, 56.

Islamist violence? After Fadlallah's death, he was labelled both a "hardliner and liberal" (in the same sentence),⁷⁰⁷ and described as having shown "that Islam can be liberal without assisting Western policies."⁷⁰⁸ In reality, however, he was neither a hardliner nor a liberal—distinctions that are so appealing to those in the West yet decried by Fadlallah—nor was he liberal "without assisting Western policies." He instead eschewed those distinctions, such as liberal or conservative, reformist or hardliner, while refusing to assist divisive visions of politics and sovereignty that ended with an Islamic state.

Fadlallah's promotion of equity through esoteric politics, women's intellectual and political equality to men, and the obliteration of minority-majority distinctions should be understood as an important departure from the political categories that Western theories of sovereignty often promote. Khomeini's seemingly disparate views on women, from those expounded in *Kashf al-asrār* to those in *Vilāyat-i faqīh*, to those post-revolution, which, instead of referring to the Qur'ān or the Sunna or to a "secular critique" as deployed by Edward Said and post-colonial scholars, show a politics of creativity which opened up new spaces for debate and legal rights. Like Khomeini, in this vein, Fadlallah also refused to emulate contemporary visions—even Khomeini's vision—on women's roles in a revolutionary society while upholding women's duties as Muslims. Perhaps, in other words, Fadlallah's most significant engagement with Khomeini's thought is found not

⁷⁰⁷ *The Telegraph*, "Grand Ayatollah Mohammed Fadlallah" (5 July 2010). URL: <https://www.telegraph.co.uk/news/obituaries/religion-obituaries/7873637/Grand-Ayatollah-Mohammed-Fadlallah.html>.

⁷⁰⁸ Ian Williams, "The Ayatollah of Canterbury," *The Guardian* (6 July 2010). URL: <https://www.theguardian.com/commentisfree/belief/2010/jul/06/religion-islam-fadlallah-lebanon-ayatollah>.

in his pronouncements on *Vilāyat-i faqīh* but instead in his departure from and elaboration on the latter's ethics and politics.

On the one hand, Fadlallah departed from Khomeini by refusing to promote a brand of ethics that promoted self-sacrifice above communal governance and reconciliation. Advocating these politics also rejected the necessity for juristic authority as the highest in the land. He nevertheless elaborated on Khomeini's politics by building on Islamist ideals that held commanding right and forbidding wrong as the highest principle of governing ethics. On the other hand, Fadlallah's iteration of *maṣlaḥa* mobilised a brand of politics that abrogated the tradition of minority politics in Islam (expressed as *ahl al-dhimma*) to promote balance, not only as it relates to stability or expediency, but also as it relates to providing equity as justice in a diverse community. Sacrificing one's tightly-held religious principles is thus the most effective way to ensure justice. Yet, Khomeini's theory of sovereignty was successful perhaps because of this very definition of sacrifice for state and nation. Khomeini's republic appears to have begun with revolution but now reflects a different kind of sacrifice, one with the fulfilment of an Islamic state and the delay of a perfect, just government with the Messiah's arrival.

Although Khomeini established God as the nominal sovereign, can God's sovereignty remain perennial for a republic in which a common good takes precedence? Or did Khomeini relegate God's dominion to the ethereal? If so, perhaps the Islamic Republic has realised the *āya*, "he who made you caliphs of earth,"⁷⁰⁹ thus

⁷⁰⁹ Q.35:39.

modernising Islamic sovereignty by enabling a nation to determine the common good according to its own requirements.

To propose an extreme interpretation: Might God have died—or served as the ultimate sacrifice—with the establishment of the Islamic Republic?⁷¹⁰ In other words, with the subordination of Islamic precepts, as well as previous notions of sovereignty, has the nation-state replaced both the sacred and the divine? This is not to suggest, as Schmitt argued, that theological concepts have become secularised in theories of the modern nation-state. Instead, it suggests the opposite, that these theological concepts have been re-subsumed into a theory of sovereignty with the Islamic Republic, thus negating the need for further elaboration.

At the same time, Khomeini's overtly-political interpretation and application of Islamic politics is what Fadlallah found so objectionable. Although Fadlallah attempted to transcend both Western and Islamic norms of sovereignty by advocating humanity as God's caliph on earth, in the end, it was Khomeini's interpretation which, although less explicitly amenable to popular and diverse forms of sovereignty, proved sufficiently flexible to unite the variegated constituencies in the contemporary Islamic political public and allow Islamic government to adapt to politics on a transnational stage.

To conclude, this study demonstrated not only a novel importance for *ḥisba* and *maṣlaḥa* in scholarship by showing their relationship and application in modern

⁷¹⁰ Here I mean the death of God in Nietzschean terms, that the interest of a community or humanity supersedes God's interests—like worship. I do not mean it in the Schmittian sense in which there is no exception or *deus ex machina*.

politics for a limited milieu (i.e., for Fadlallah and Khomeini, as well as some of their peers and teachers), but also provided a departure from most scholarship on Khomeini and other global intellectuals. I hope to have put forth a new perspective, a view from an edge if you will, on the master narrative of Islamic politics in general and Khomeini and Fadlallah's thought in particular. This new perspective is in part due to sources that have been either overlooked or insufficiently examined. This new perspective also lends itself to a departure from structural and theoretical paradigms. In other words, a taking a thematic approach for studying the evolution of concepts in one's thought allowed in the present case for a disciplined and novel study of an intellectual's political life. Abrahamian's *Khomeinism* and Adib-Moghaddam's edited volume anticipated this theoretical turn, which allows for a liberation from the frequent obsession with the minutiae of daily, apolitical life by viewing sovereignty from critical perspectives instead of a broad chronology.

It is my hope that a view of sovereignty from the perspective of *hisba* and *maṣlaḥa* as intimate political and social partners—as opposed to their separation in Cook and Opwis's work—allows for fruitful points of comparison and contrast that might be less apparent from other perspectives (i.e., focusing only on the military, gender, or law as isolated political categories). The goal of this study was to illustrate how two concepts, never as explicitly linked in English-language scholarship, are crucial for understanding how ethics and politics function in modern Islamic political thought. While commanding right and forbidding wrong is most often a tool by which tradition is maintained and *maṣlaḥa* is one by which innovation is performed, together they are critical elements in Islamic authority's formulation. This relationship provides a basis with which future scholarship might engage, using other religio-

political theoreticians to show whether these concepts—or others—have salience beyond those whom I have examined, as well as the historical applications of various concepts. This approach, I hope, provides a new framework for scholarship in which ethical and political considerations can be examined in relation to sacred and secular politics in the modern period.

Glossary

aḥammīyya: relative importance/weight when considering what to command and what to forbid

ahl al-dhimma: protected persons

ahl al-kitāb: people of the book

Al-aḍwā': Da'wa Party journal, The Light

'allāma: learned one

Afwāj al-Maqāwama al-Lubnāniyya: The Lebanese Resistance Brigades or Amal

al-amr bi-l-ma'rūf wa-l-nahī 'an al-munkar, P. *amr bih ma'rūf va nahī az munkar*: commanding right and forbidding wrong

al-'ibādāt: issues pertaining to worship or man's relationship with God

al-intiẓār: quietism (lit. anticipation [for the Messiah])

al-iṣlāḥ: reform

al-masā'il al-fiqhiyya: Fadlallah's treatise of *Jurisprudential Issues*

al-maṣāliḥ al-mursala: seeking the greatest benefit of the people in legal judgements

al-mu'āmalāt: affairs concerning man's legal relationship with man

al-Munṭalaq: The Outbreak (Lebanese journal)

bāṭin: esoteric

ḍarār: damage

dawlat al-insān: state of humanity

Fidāyān-i Islām: A Shi'i revolutionary group established in Iran in 1946

faqīh (pl. *fuqahā'*): jurist

fiqh: jurisprudence

fāsid: corrupt

istiftā' (pl. *istiftā'āt*): legal opinion

majlis: parliament

marja' al-taqlīd (pl. *marāji' al-taqlīd*), P. *marja' -i taqlīd* (pl. *marāji' -i taqlīd*): source of emulation

ghayba: occultation/disappearance of the twelfth imam

ḥadīth: the doings and sayings of the Prophet

ḥisba: a ruler's duty to command right and forbid wrong

ḥadd (pl. *ḥudūd*): legal limit (of the *sharī'a*)

Ḥizb al-da'wa: The Da'wa Party

ijmā': consensus

ijtihād: independent reasoning when making legal judgements

inqilāb-i sifd: The White Revolution

iḍtirār, P. *iẓtirār*: exigency

ijāza: permission

'irfān: Gnosticism

irtidād: apostasy

jumhūr: public (or sometimes masses)

jumhūriyya: republic

khilāfat al-insān: Caliphate of Humanity

kifā'ī: sufficiency in number

mafsada (pl. *mafāsīd*): corruption

Mahdī: the Messiah

majma' -i tashkhīṣ-i maṣlaḥat-i niẓām: Expediency Council

māl (pl. *amwāl*): property (sometimes capital)

maqṣad (pl. *maqāṣid*): goal

maqṣad/maqāṣid al-sharī'a: goal of the *sharī'a*

marja' iyya, P. *marja' iyyat*: the office of *marja' taqlīd* (source of emulation for Shi'i)

maṣlaḥa (pl. *maṣāliḥ*), P. *maṣlaḥat*: benefit

maṣlaḥa ‘*amma*, P. *maṣlaḥat* ‘*amma*: public interest

milla, P. *millat*: nation

muḥsid fī al-arḍ, P. *muḥsid fī-l-arḍ*: corrupting of the earth

Mujāhidīn-i khalq: People’s Mujahidin or MKO

mujtahid: one who engages in *ijtihād*

mukallaḥ: a legally competent Muslim

murtadd al-fiṭrī: one who apostasises from Islam

murtadd al-millī: one who apostasises from a sect of Islam

nizām: system (or government)

qaḍiyya: issue

qalb: heart

P. *qanūn-i asāsī*: the constitution

qiyās: legal analogy by which a new ruling is made based on previous textual ruling(s)

radd: apostasies

rāfiḍa: heretics (lit. those who refuse), mostly used pejoratively

risāla: treatise (usually of jurisprudential questions or issues)

rubā ‘ī (pl. *rubā ‘yāt*): quatrain

ṣalāt: prayer

shar‘: Islamic law, of or pertaining to the *sharī‘a*

shūrā-yi nigahbān: Guardian Council

tafsīr: interpretation or exegesis

tāhir: pure

taqiyya: dissimulation

tawḍīḥ al-masā’il, P. *tawzīḥ-i masā’il*: Khomeini’s *Explanation of Questions*

ta'zīr: punishments that are the prerogative of the state for cases that do not fall under jurisdiction of the *sharī'a*

thawra: revolution

umma: Muslim nation

'urf: common or civil law

P. *'urfī shudan*: secularisation

uṣūl al-fiqh: fundamentals of jurisprudence

walāya: authority to govern

amīr al-mu'minīn: Commander of the Faithful

walī al-faqīh, P. *walī-yi faqīh*: guardian jurist

wilāya: space/domain of governance; it is also often used to refer to authority

wilāyat al-faqīh, P. *vilāyat-i faqīh*: Guardianship of the Jurist

wilāya takwīniyya: the cosmic authority of the Imams

yad: hand

ẓāhir: exoteric

zamān: time

zibān: tongue

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