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The Relationship Between the Role of General Will in Modern Law and Islamic State Law in Imam Khomeini's Jurisprudential-Political Thought

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Abstract

One of the theoretical and practical challenges between the modern legal system and the legal system of the Islamic state is the relationship between *fiqh* (Islamic jurisprudence; henceforth, simply as "jurisprudence") and law. In the Islamic state, jurisprudence is considered the primary source of legislation, whereas in modern legal systems, law is primarily derived from the element of the "general will." This fundamental difference has led to questions regarding the compatibility or incompatibility of these two legislative models. The main issue of this research is to examine the position of "general will" in modern law and compare it with the position of this concept in the law of the Islamic state as conceived by Imam Khomeini. This research pursues two main objectives:

1) To explain the position of "general will" in the modern legal system and analyze its relation to law based on jurisprudence.

2) To examine the views of Imam Khomeini, the architect of the Islamic Republic of Iran, in order to clarify how jurisprudence and law interact within the framework of the Islamic state.

This research was conducted using an analytical-descriptive method and based on library resources. In this regard, the theoretical foundations of the "general will" in modern law were first examined, and then, through the analysis of Imam Khomeini's views, the position of this concept in the law of the Islamic state was explained. The findings of the research can be summarized as follows:

1) In the modern legal system, law is defined as the manifestation of the general will, and its legitimacy is dependent on the will of the majority of society. This perspective is rooted in the ideas of the social contract, which sees law as a human-made and changeable construct.

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2) In Imam Khomeini's jurisprudential-legal system, although law must align with the principles of Islamic sharia, the role of the people in legislation is not overlooked. He emphasized the theory of "Wilāyat al-Faqīh" (Guardianship of the Jurisprudent), asserting that the legitimacy of government requires popular acceptance, but the content of laws must be within the framework of Islamic rulings. In other words, the "general will" is understood within the framework of divine law, not independently of it. According to Article 56 of the Constitution of the Islamic Republic of Iran, the sovereignty of the people exists within the sovereignty of God, and, conversely, it can be said that Islam sets the limits for the republican aspect of the system.

3) The interaction between jurisprudence and law in Imam Khomeini's thought demonstrates that jurisprudence can respond to the evolving needs of society by utilizing ijtihad (juridical reasoning) while maintaining the fixed principles of Islam. This is particularly evident in Imam Khomeini's ijtihad-based model and his special attention to the role of time and place in ijtihad. According to Imam Khomeini, the form of government depends on the temporal and spatial requirements determined by the people, but its content must be based on Islamic laws and rulings. This perspective offers a way to reduce the apparent conflicts between jurisprudence and modern law.

This research shows that, although the foundations of the legitimacy of law differ in the modern system and the Islamic state, Imam Khomeini's thought does not entirely dismiss the role of the people in the Islamic government. Rather, it is defined within the framework of Sharia. This finding can help reduce the theoretical challenges between the two legal systems and prevent potential misinterpretations of the relationship between religion and law in the Islamic Republic.

Keywords

General will, jurisprudence (*fiqh*) and law, Islamic state, modern law, Imam Khomeini.

Introduction

Modern law, as a product of modernity, has led to significant transformations by relying on the fundamental value of individual freedom or by emphasizing the essential precedence of private law in human life from political, economic, and social perspectives. However, the fundamental differences between traditional Islamic law and modern law—namely, the differences in the basis of the validity of legal rules and in the level of the objective of legal norms and systems—cannot be overlooked. The basis of the validity of rules in traditional Islamic law is the will of the Lawgiver, whereas in modern law it is humanist rationality. Regarding the difference in the objective of the rules of these two legal systems, it can be said that the individualism rooted in humanism has not been widely endorsed by the theological and philosophical teachings of Islamic jurisprudence. For this reason, it may be argued that Islamic law and modern law diverge significantly in terms of their goals (Shahabi, 2022, p. 437). A fundamental issue that may be raised—and which constitutes the central focus of this article—is that the subordination of law to sharia or the identification of law and sharia may result in certain problems. Among the most significant of these is that jurisprudence, or even a law with jurisprudential content which claims to reflect the will of the Lawgiver, is interpreted and derived by a jurist whose authority stems solely from his status as a jurist. This stands in contradiction to the principle of grounding law in the general will. In other words, in a law with jurisprudential content, it is the personal will of the jurist that prevails, rather than the general will. With this introduction, we now turn to an analysis of the place of the general will—one of the most important components of modern law—and we will examine the status of this concept and the approaches to it from the perspective of the Western legal system, which gives rise to modern law, and the Islamic legal system, which underpins law in the Islamic state. Accordingly, the primary question of this article is the investigation of the role and position of the concept of the general will in modern law and in the law of the Islamic state within the politico-jurisprudential thought of Imam Khomeini.

Our method in this study is descriptive-analytical, and the data collection relies on library sources. In reviewing the research background, the following articles were identified as relevant to the present topic:

1) The article “The manifestation of subjectivity in Jean-Jacques Rousseau's theory of the general will” by Mojtaba Javidi, which shares with the present study a fundamental analysis of the general will as a component in modern law. However, its focus is on Rousseau’s philosophy, whereas the present research

examines the place of the general will in both modern and Islamic law.

2) The article "The constituent elements of law and the approach to it in the Islamic legal system" by Seyyed Mohammad Hossein Kazemeini, which overlaps with this study in its exploration of the foundations of legislation in Islamic law. The difference lies in the fact that Kazemini's article addresses the legal systems as a whole, while the present study specifically analyzes the unique role of the *general will* in both modern and Islamic legal systems.

3) The article "An analysis of the role of general will in the Constitutional Law of the Constitutional Revolution and the Islamic Republic of Iran" by Mostafa Amiri and colleagues, which is similar to the present research in its attention to the role of the general will in legislation. However, its scope is limited to Iranian constitutional law, whereas the current study undertakes a broader investigation of this component and its impact on law.

Given the differing perspectives on modern law—particularly regarding the important and influential component of the general will—from an Islamic standpoint, we first examined the approach to and position of the general will within modern law and modern legislation. We then explored the place of this same component in the thought of Imam Khomeini, as a representative figure of Islamic law and legislation. Finally, by assessing and comparing these two perspectives and addressing the issues related to the incompatibility of the role of the general will in modern law versus in the law of the Islamic state, we presented a comparative table outlining both views. To clarify the discussion, we will begin by providing a brief explanation of three key terms used in this paper: law, fiqh, and general will.

Law: In legal terminology, law refers to a set of rules and regulations enacted and declared by authorized institutions and authorities. Law determines what must be done or what actions must be avoided. In legal discourse, the term "law" is used in both a general and a specific sense. In its general sense, law refers to any legal rule that is issued in written form by a competent authority—whether the legislature or other bodies such as a constituent assembly, the cabinet, etc. In this sense, law includes a hierarchical system beginning with the constitution and extending to by-laws, executive regulations, and so on (Mousavi, 2006, p. 22). In the specific sense, law refers to that subset of legal rules enacted solely by the legislature through a defined process and formal procedures (Kazemeini, 2019, p. 5).

***Fiqh* (Islamic jurisprudence):** In its contemporary usage, *fiqh* refers to the science of practical legal rulings derived from recognized and detailed sources (Modir Shanechi, 2013, p. 108).

General Will: In legal systems, the general will is recognized as a key pillar and plays a crucial role in the emergence and persistence of government and the state. This concept originated in the West, particularly after the Renaissance, during the modern era. The theory of the general will—closely tied to the theory of the social contract—profoundly influenced the revolutions of the 17th and 18th centuries in England, America, and France and became one of the foundational principles of modern democracies. Jean-Jacques Rousseau, the 18th-century thinker, is considered the most prominent figure in this field (Javidi, 2021, p. 2). In summary, from the perspective of the modern legal system, law is the product of the general will and expresses the will of individuals. Since the law embodies both the universality of will and the universality of subject matter—and because individuals in society are bound only to obey the general will (Rousseau, 2016, p. 98)—this will is essentially the will of the people themselves. Thus, laws that establish the right to vote are, in effect, constitutional laws (Kazemeini, 2019, p. 6). It is worth noting that Article 6 of the Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, officially addressed the concept of the general will for the first time: "Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its formation."Overall, the concept of the general will has had wide-ranging effects, serving as the source of major political and social transformations—especially in the formation of today's political systems.

1. Principles of the Element of General Will in Modern Law

Given the fundamental role of the general will in modern law, we will first examine and clarify the concept of the general will. We will then discuss the notion of law and the place of the general will within modern law, drawing on prominent perspectives from the Enlightenment era in the West as well as from the Constitutional Revolution and the Islamic Revolution in Iran.

1-1. General Will in Rousseau's View

Given that Rousseau is the most prominent figure regarding the theory of the social contract—and particularly the concept of the general will in the Western legal tradition—we begin by clarifying this fundamental component from his perspective.

From Rousseau's point of view, the *general will* is neither the will of all individuals, nor a compromise between individual wills, nor even the average of the wills of the members of a society. Rather, the term is closely related to

the idea of the common good and collective welfare. Rousseau makes a distinction between the "will of all" and the "general will." The will of all is based on private interests, whereas the general will is grounded in shared and public interests.

Because the will of all reflects private benefits, it cannot rise above public opinion and popular sentiment. Even slight changes in the quantity, quality, or proportion of individual interests can directly affect and alter public attitudes and collective outlooks. Thus, the will of all is unstable and volatile—it is constantly subject to additions and subtractions.

By contrast, the general will is tied to the notion of public good and is unaffected by personal desires or individual conflicts. It is not dependent on numerical quantities or on the majority's opinion. According to Rousseau, what gives the general will its universality is the common interest that binds individuals together—not the number of votes or opinions. In this sense, the general will is "general" because it reflects the shared aim and desire of all members of a society. And ideally, in a well-ordered society, the general will aligns with the will of the majority.

The general will, which represents the public good, functions independently of the standards and criteria of minority or majority groups (Rousseau, 2000, p. 110). According to this theory, all citizens have the right to participate in the formation of laws, either directly or through their representatives.

1-2. The Concept of Law and the Place of General Will Therein from the Perspective of Enlightenment-Era Intellectuals

Philosophers of the enlightenment age, in offering a rational account of the origins of political and legal systems, also address the nature of law. They present a rational picture of how the social order emerges and regard the foundation and raison d'être of law as a social contract (Cassirer, 2014, p. 272). Here, we examine the views of two of the most prominent thinkers of the Enlightenment—Rousseau and Kant (Rahmani et al., 2021, p. 5). A key and noteworthy point in these interpretations is the central role and special status of the general will in how these thinkers conceptualize modern law.

Rousseau's Interpretation of the Relationship Between the General Will and Law: According to Rousseau, the defining feature of the civil state, the social contract, and the establishment of law is the centrality of human reason. In his view, the spirit of the law is reason—without which the law lacks identity and determination. Reason, in the public domain—which is the realm of political and legal action—manifests itself in the free will of

individuals. Once the origin of the general will is clarified, it becomes evident that Rousseau considers the foundation and source of lawmaking to be autonomous reason, which is actualized in the general will. The general will, in turn, constitutes both the spirit of the law and the spirit of the legislative power. On this basis, for Rousseau, positive law is merely the outer shell or appearance of law. The inner essence of law is the general will, and the innermost core of that essence is autonomous reason and freedom.

Kant's Interpretation of the Relationship Between the General Will and Law: Regarding the relationship between the autonomy of reason and law, Kant distinguishes between two types of law: one pertains to nature and falls within the realm of theoretical and practical reason, and the other pertains to freedom and belongs to the domain of practical reason. (Kant, 1990, p. 21) In Kant's thought, the law of practical reason is rooted in the categorical imperative—that is, the will of the human being. For Kant, reason has a subjective nature.[1] In other words, since practical reason has the capacity to generate will, it therefore also possesses the capacity to function as a lawgiver (Rahmani et al., 2021, p. 11).

1-3. The Concept of Law and the Place of General Will During the Constitutionalist Era in Iran and Its Constitutional Law

An important reason for turning to this particular period to interpret the concept of law is that it was during this era that, for the first time, the concept of law and its various interpretations—as well as related components such as the general will—were introduced in Iran. In the Constitutional era, the concept of law emerged with the aim of establishing a responsible and systematic government. The main objective of the Constitutional Movement was to restrain the despotic monarchy and limit autocratic political power, although it did not achieve significant success (Rasekh & Bakhshizadeh, 2013, p. 22).

1-3-1. The Concept of Law from the Perspective of Intellectualists

Here, we address three major approaches.

First Approach: The Idea of Turning Sharia into a Legal Code

According to Mostashar al-Dowleh, "law" is the same as what is called *loi* in French, consisting of several books, each of which is referred to as a *code*.

1. This means that the subject (the categorical imperative and the rational essence of the human being) is the precondition for the possibility of the law's realization.

From his perspective, these codes hold the same status among the French as religious texts do among Muslims. Some believe that Mostashar al-Dowleh was aware of the fundamental and essential differences between Western and Islamic legal systems, but, considering that people were more receptive to Islamic concepts, he attempted to present Western ideas as being compatible with Islamic notions (Madadpour, 2006, vol. 1, p. 568).

Second Approach: Conflict Between Law and Sharia

Mirza Fathali Akhundzadeh believed that Islam and modernity are fundamentally incompatible and cannot be reconciled—neither at the level of foundational principles nor within political, legal, scientific, or economic systems (Tahan Nazif & Ehsani, 2017, p. 5). He openly spoke of the contradiction between Western political philosophy and Islamic law and was a staunch advocate of the separation of religion from politics (Adamiyat, 2015, p. 154).

Third Approach: Mutual Contributions of Sharia and Law

Mirza Abd al-Rahim Talibov Tabrizi, like other intellectuals of his time, was deeply enamored with the concept of law, repeatedly emphasizing that the root of all of Iran's problems lies in lawlessness, while the foundation of all Western progress is the rule of law (Ajedani, 2020, p. 180). He believed that the material rulings and laws of religion were inadequate for managing the affairs of contemporary society and, on this basis, needed to be supplemented by new laws.

1-3-2. The Concept of Law According to Constitutional-Era Scholars

Nāʾīnī, one of the pro-Constitutionalist scholars, argued that during the Occultation—due to the absence of access to the infallible Imam—it is permissible for human beings to formulate laws compatible with and grounded in Sharia, in order to reduce the oppression of tyrannical regimes. This, he contended, would enable the replacement of absolute despotism with a constrained constitutional government (Nāʾīnī, 2013, p. 84). To justify a religious constitutional system and its legal institutions, he regarded constitutionalism as a manifestation of the people's will and a means to limit the king's power by compelling him to abide by the law. His use of the phrase "manifestation of the people's will" reflects his attention to the component of the general will within the political system and legislative process from his perspective. Akhūnd Khurāsānī, another pro-Constitutionalist scholar, believed that the conditions of society during the Occultation necessitated the formulation of customary law. However, he did not place this customary law

in opposition to religious or divine law. Rather, he asserted that drafting such a law does not imply a conflict between custom (*ʿurf*) and religion; he viewed it as being compatible with divine law, with the only difference being that its legislator is not necessarily a prophet (Javadzadeh, 2011, p. 9). Therefore, it can be said that he considered the component of the general will-within these parameters-to have an influence on lawmaking, though in his terms, this referred to "human law."

1-3-3. The Place of General Will in Constitutional Law of the Constitutional Movement

It may be argued that the Constitutional Law of the Iranian Constitutional Revolution reflects a view close to Rousseau's concept of the general will. Given that the main goal of the Constitutional Law was to transfer the right to govern from the monarch to the people, this is clearly reflected in Article 26 of the Supplement to the Constitutional Law, which states that the powers of the state originate from the nation. According to Article 35, sovereignty is a trust that, by divine grace, is delegated by the nation to the person of the king.

1-4. The Concept of Law and the Place of General Will in Islamic Revolution and the Constitution of the Islamic Republic of Iran

Article 1 of the Constitution of the Islamic Republic of Iran defines the system of governance as an Islamic Republic, founded on two essential pillars: the Islamic nature of the government and its republican aspect—the latter representing popular sovereignty and the general will. Article 6 of the Constitution refers to public opinion, stating that in the Islamic Republic of Iran, the affairs of the country must be managed based on public votes. This article attempts to strengthen the republican dimension of the state by bringing together terms such as public opinion, elections, and referenda. However, considering Article 56, which states: "Absolute sovereignty over the world and humanity belongs to God, and He has made human beings sovereign over their social destiny...," it can be interpreted that the Constitution of the Islamic Republic of Iran recognizes two forms of sovereignty: divine sovereignty and national sovereignty. Each may be seen as representing one facet of the nature of the government—that is, divine sovereignty symbolizes the Islamic character of the system, while national sovereignty represents its republican character. This article considers sovereignty to belong to God and emphasizes that He has granted this right to all members of the nation, so that they may exercise it through free elections. According to this principle, the people's

sovereignty is situated within the framework of God's sovereignty; in other words, the Islamic nature of the system sets a boundary for its republican character (Amiri et al., 2023, p. 10).

2. Imam Khomeini's Principles and Ideas Regarding General Will

Given his distinct perspective on law—and particularly on the concept of the general will—we will now examine the status of this component based on Imam Khomeini's principles in jurisprudence, its principles, philosophy, and mysticism, considering it as a key criterion in Islamic law and legislation.

2-1. Jurisprudential Principles

Undoubtedly, Imam Khomeini's political views and ideas cannot be examined independently of his jurisprudential thought. More precisely, his political understanding is largely a reflection of his jurisprudential thinking (Islamic Political Research Group, 2000, p. 1). What distinguishes Imam Khomeini from other jurists in defining jurisprudence is the definition he put forward after the revolution, shaped by his governmental interpretation of jurisprudence (*fiqh*). This definition stems from a different understanding of jurisprudence and its application in society:

> Government, in the view of a true mujtahid, is the practical philosophy of the entirety of jurisprudence in all dimensions of human life. Government reflects the practical aspect of jurisprudence in addressing all social, political, military, and cultural problems. Jurisprudence is the real and comprehensive theory for the management of humanity from cradle to grave. (Imam Khomeini, 2010, Vol. 21, p. 289)

This statement, which seeks to clarify the place of jurisprudence in society, implies that Imam Khomeini viewed jurisprudence not merely as a tool for deriving legal rulings in devotional or commercial matters, but as Islam's strategy for governing society. He saw the true manifestation of jurisprudence in the realm of governance and in confronting all social, political, military, and cultural challenges. According to Imam Khomeini, the form of government is determined by the temporal and spatial circumstances and thus by the people, but its content must be derived from the laws and rulings of Islam (Akbari Moallem, 2015, p. 8).

2-2. Foundations in the Principles of Jurisprudence

The scope of Imam Khomeini's jurisprudential thought—no matter how

broadly one conceives it—cannot be separated from his framework of jurisprudential principles (*uṣūl al-fiqh*). Therefore, while acknowledging his unique personal characteristics, there should be no doubt about the systematic and principled nature of his jurisprudential-political thought, which is deeply rooted in his precise *uṣūlī* foundations. According to Imam Khomeini's definition of the science of principles of jurisprudence,[1] its rules serve as the major premises in inferential reasoning for deriving legal rulings and thus play a direct role in juristic conclusions. As such, it may be said that *uṣūlī* principles form a crucial element in the production of his jurisprudential-political ideas. Here, we will briefly highlight two examples of Imam Khomeini's use of *uṣūlī* principles in rearticulating his jurisprudential-political thought:

1. The Role of Authority in the Concept of Command: In his discussion of commands in the science of principles of jurisprudence, Imam Khomeini believes that authority (or superiority, *ʿuluww*) plays a role in the meaning of a command. Therefore, in the political realm, it can be concluded that the implementation of the ruler's commands is only possible if the ruler possesses the characteristic of influential speech and governmental authority. This *uṣūlī* discussion has two implications for political thought, with the second directly relating to our topic—the general will:

First Implication (Creating a logical connection between the necessity of implementing Islamic rulings and the necessity of forming an Islamic government): Imam Khomeini, considering the nature and quality of Islamic rulings, concludes that:

> The implementation of rulings and adherence to them requires the establishment of a government. Without establishing a vast and powerful apparatus for execution and administration, one cannot fulfill the duty of implementing divine rulings. (Imam Khomeini, 2013, p. 28)

Second Implication (Governmental recommendations instead of governmental commands): After the establishment of the Islamic government, Imam Khomeini observed that the influence of governmental commands on certain political and social issues was weak and had limited reach. Therefore, instead of using the form of command and prohibition in governance, he expressed his political and governmental views in the form of

1. "Indeed, they are the procedural rules that can be placed in the major premise for the deduction of the universal divine or practical legal rulings (Sobhani Tabrizi, 1988, vol. 1, p. 11)."

recommendations. Here are two examples of this:

First Example: In response to Ayatollah Montazeri's resignation from the position of Deputy Supreme Leader, Imam Khomeini stated:

> … and for this reason, both you and I were opposed from the beginning to your selection, and in this regard, we both thought alike. But the Assembly of Experts had come to this conclusion, and I did not want to intervene in their legal domain... (Imam Khomeini, 2010, Vol. 21, p. 334)

As clearly seen, Imam Khomeini had a completely different opinion on this very important issue—the appointment of the Deputy Supreme Leader—despite his differing viewpoint from one of the pillars of the government, namely, the Assembly of Experts, which represents the general will. However, considering the principle of the general will, he never imposed his opinion and respected the view of the Assembly of Experts.

Second Example: In response to Ayatollah Meshkini's letter regarding the drafting of the constitutional amendment, Imam Khomeini stated:

> … whatever the gentlemen deem necessary, they should act accordingly. I will not interfere. Only regarding the leadership… I have always believed and insisted that the condition of being a *marja'* (source of emulation) is not necessary. An upright mujtahid approved by the honorable members of the Assembly of Experts across the country is sufficient… This was what I said in the original Constitution, but my friends insisted on the condition of "marjaʿiyat," and I accepted it. At that time, I knew that this would not be implementable in the not-too-distant future. (Imam Khomeini, 2010, vol. 21, p. 371)

Again, as seen in this example, Imam Khomeini respected the decision of the Assembly of Experts on the Constitution, the symbol of the general will, and did not impose his personal opinion, even though he had predicted the impasse on this issue long before.

2. Universal Nature as the Object of Command: One of the discussions in the science of principles of jurisprudence (*uṣūl*) is about what the commands and prohibitions of the Lawgiver pertain to. Does the Lawgiver command and prohibit something based on a universal nature and essence (quiddity), or does the Lawgiver intend a specific external instance in relation to the command and prohibition? Imam Khomeini accepts the first view and believes that the second view stems from a misunderstanding of the

philosophical concept of essence (quiddity). The important consequence of this chosen theory, according to Imam Khomeini, is that the duty-bound individual (*mukallaf*) has rational discretion in realizing the external instance of the universal nature or essence that is sought in any particular instance. However, the scope of the subject's discretion is limited to the extent that the realized phenomenon does not deviate from the desired objective of the Lawgiver—the universal nature. Another corollary of this theory is that it cannot be said that the subject has discretionary power in the external realization of the Lawgiver's desire in a legal sense. Rather, the choice referred to here is from the perspective of reason, not from the perspective of Sharia. What the Lawgiver desires is the alignment of the action performed by the subject with what is commanded and prohibited (Sobhani Tabrizi, 1988, Vol. 1, p. 348). This *uṣūlī* principle plays a very active role in Imam Khomeini's political thought, and understanding it clears up many ambiguities. In fact, Imam Khomeini's belief in the Islamic Republic and his emphasis on popular elections, among other similar issues, can be formulated in this way:

First: Islamic government is one of the primary rulings of Islam, and every jurist is obligated to establish it. Second: The people are obligated to refer to a qualified jurist for governance in the formation of the Islamic government. Third: It is obligatory for the jurist selected by the people to accept this significant responsibility, and they are not excused for abstaining from it. Fourth: The people are requested to establish the Islamic government and implement its rulings, but the specific form of the Islamic government is entrusted to the legal judgment of the jurists and the choice of the people. Based on this, Imam Khomeini concluded through jurisprudential deduction that the realization of the Islamic government in the modern world is possible within the framework of an Islamic Republic. In explaining the scope of people's discretion in Islamic law, he states: "The sacred Lawgiver of Islam is the sole lawgiver. No one has the right to Lawgiver; and no law other than the command of the Lawgiver can be enforced" (Khomeini, 2013, p. 43). However, he also states: "We seek the establishment of an Islamic Republic, and that is a government based on the public vote. The final shape of the government, given the current conditions and necessities of our society, will be determined by the people themselves" (Imam Khomeini, 2010, Vol. 4, p. 248).The ideal government, according to him, is an Islamic Republic—one whose foundation is based on the people's vote, both direct and indirect, and governed by laws and conditions that align with the sacred Sharia. Imam

Khomeini repeatedly emphasized the necessity of following the people's will, and from his perspective, no one has the right to impose their will upon the people. As he states: "Islam has not allowed us to be dictators. We are followers of the people's votes. Whatever the people decide, we will follow them" (Khomeini, 2010, Vol. 11, p. 34). This demonstrates the central importance of the concept of the general will in his political thought, as derived from his foundations in jurisprudence and jurisprudential principles.

2-3. Philosophical and Mystical Foundations

Imam Khomeini holds a mystical understanding of human nature that has had a decisive and significant impact on his political thought. Philosophically, he also believes in human free will, and consequently, the rights and duties of individuals in determining their own destiny, including their political fate. In Imam Khomeini's theories, on one hand, he discusses the right of people to determine their own destiny, and on the other hand, the historical necessity of Prophethood as a means of guiding humanity toward its ultimate goal. This introduces a new relationship between religion and politics, in which, according to Imam Khomeini, religion represents the ultimate "being." Within this intellectual framework, religious democracy is the arrangement of human relationships aimed at realizing the spiritual perfection of humanity, and it is a manifestation of human will. In religious democracy, democracy means the actualization of the right to self-determination in this worldly life, while religion signifies the presence of the divine right in both individual and collective life. Furthermore, Imam Khomeini considers the content of the government as the main criterion for evaluating a political system. Since he views the content of an Islamic government as Islamic laws, he believes its essence is inherently opposed to despotism, with republicanism in the political sphere being one of its fundamental necessities (Ranjbar, 2005, p. 14).

3. A Comparative Study of the Role of General Will in Modern Law and the Islamic State Law in Imam Khomeini's Thought

The modern concept of law, as discussed, considers law as born from the general will. Therefore, it has both a negative and a positive aspect. The positive aspect of this concept of law revolves around the centrality of individual will in the law and the management of social transformations based on it, while the negative aspect pertains to rejecting anything that contradicts or opposes this will. The most significant opposition in this negative aspect is the conflict between the will of individuals in society and the will of the Wise

Lawgiver (*Shāriʿ Ḥakīm*). In this conflict, according to the principles of modern legal systems, the victorious party is human will. Therefore, from this perspective, religion and Sharia are considered flawed elements, incapable of governing and managing society. Furthermore, laws cannot have their roots in religion because individual religion is incompatible with governance and social management, while social religion is harmful to governance as it deceives individuals and leads them to become delusional. As a result, with the entry of religion and religious authorities, the law becomes paralyzed. Hence, the domains and areas of influence of these two types of law—law derived from divine will and law derived from the will of individuals—must be separated, and the foundations of civil law should be detached from divine will. In other words, it can be said that law in modern legal discourse was born and developed with an anti-religious and ideological stance. This concept of law in modern legal systems is completely different and even contradictory to the concept of law in Islamic legal systems.

The law referred to in Islamic legal systems, which is responsible for maintaining order, managing society, and upholding justice, is not created by humans—though it certainly will not disregard human needs—but rather is based on the will of the Wise Lawgiver. In this system, the source of the legitimacy and foundation of legal rules and regulations is the wise will of God, the Creator and Lawgiver. In short, from the perspective of Islamic legal systems, law can be defined as a proposition that aligns with or is not contrary to Islamic teachings and rulings and is in line with social management and the public interest, enacted by an authority with the competence to legislate. Based on this analysis, the foundational elements of law in legal systems shaped by different epistemological foundations will not be identical, and accordingly, the approaches and interpretations of law will also differ (Kazemeini, 2019, p. 7). From some of Imam Khomeini's statements, it appears that he accepted the majority vote as the basis for the movement of society. According to his view, it can be said that the central and important issue is the content of the government. Imam Khomeini believed that it is not the legal form of the regime that is of paramount importance, although he had specific criteria and frameworks for the form of government: "Republic means the same as it does everywhere, but this republic is based on a constitution that is the law of Islam... an Islamic republic. However, the Islamic republic is based on the vote of the majority of the people, and Islam is the foundation because its constitution is the law of Islam." Therefore, his emphasis on the content of the government does not mean that he overlooked the importance of its form. In

fact, Imam Khomeini underscored the necessity of establishing a republic and people's participation in political affairs based on Sharia principles. To better understand this foundation, we need to explore the difference between the Western legal system and modern law, on the one hand, and the Islamic legal system and law in an Islamic state, on the other, from the perspectives of both the form and content of law. The formal aspect can be considered in two dimensions: the will and the process. In this sense, law must first arise from the will of the majority and, second, must be enacted through an acceptable and competent process. Meanwhile, the Islamic legal system and natural law emphasize the content of the law, seeking the necessity of following the law within it. For them, the source of this law is either nature, divine will, or human reason, which can be understood. Thus, the content aspect becomes a priority for them. Another important point is whether the law has intrinsic and foundational value, or whether it has derivative and instrumental value, essentially serving as a means to achieve higher goals. In the independent approach, the value and importance of enforcing the law, adhering to it, and maintaining order in society take precedence over fundamental values like justice. This perspective is dominant in Western legal systems, particularly in positivist and empiricist approaches. On the other hand, in the organic and instrumental view, the law does not have intrinsic value but is considered a means to achieve fundamental and essential goals. If it conflicts with those goals, it should be changed or discarded (Kazemeini, 2019, p. 10).

Conclusion

In non-monotheistic legal systems, especially those shaped under the humanistic and positivist schools, firstly, the focus and emphasis on the content of the law and legal system, and secondly, their nature, differ significantly. In these types of legal systems, the will of the Lawgiver has no place, and it is replaced by human will, with human understanding and desires taking center stage. The path to this understanding is through autonomous reason, and as previously mentioned, since practical reason has the capacity to generate will, it is therefore possible for it to create laws. Based on this, one of the major issues regarding the incompatibility of Islamic jurisprudence and modern law is that law must be based on the general will of society; whereas in Islamic jurisprudential thought, Islamic law is based on the jurists' understanding of religion and has no connection to general will. In response, it should be said that the most fundamental core of legal propositions in Islamic legal systems is their being grounded in the wise will of the Lawgiver, or at

the very least, their not contradicting it. Otherwise, a legal proposition would not be established. The fallacy here is that the jurists' understanding is considered the criterion for understanding the will of the Lawgiver, whereas many rulings are derived from Quranic texts and hadiths, not from the jurists' interpretations. Furthermore, it can be argued that in the legal system of an Islamic state (a state with a juridical framework rooted in Islamic jurisprudence), general will is not entirely disregarded, but rather, it is considered within a specific framework and process of governance and legislation. What can be inferred from the thoughts of Imam Khomeini, as an Islamic scholar and the founder of the Islamic system, is that the importance of the content of the political and legal system—and consequently the law, which is divine law—outweighs its form. He, while trusting in the will of the people, seeks to promote awareness, growth, and development within society. For example, through his juristic reasoning, he concluded that the establishment of an Islamic government in the modern world is possible in the form of an Islamic Republic, where the type and form of government (Republic) aligns with the Islamic content of the government and its laws. In other words, according to the principles of the Constitution, sovereignty belongs primarily and inherently to God, and God has granted this right to all individuals in the nation to exercise through free choice; thus, according to this law—particularly Article 56 of the Constitution—the sovereignty of the people is subordinate to the sovereignty of God. Another important point in Imam Khomeini's thought is that, while he believes there is no substantive interaction between modern law and Islamic law due to differences in the basis of legal validity and the objectives of the legal rules in these two systems, he does believe in the interaction between modern law and Islamic law when considering the formal aspect of the law and the legal system. In his view, this separation and lack of interaction is not only detrimental, but also incompatible with the theological foundations of Shia jurisprudence.

Another point, as evidence against the corruption of the claim that the law must be absolutely based on public or general will, is perhaps found in the historical examination of the development of the concept of law as proposed by Western thinkers. We see that various incomplete and sometimes contradictory theories, each focusing on a specific aspect of philosophical, legal, and legal thought, have prioritized certain elements while neglecting others. As a result, these theories either led to practical consequences and problems or were flawed or contradicted by other theories in the realm of thought. All these misfortunes stem from turning away from divine laws and

commandments and the absolute reliance on general will, which could be said to form the backbone of modern law. Therefore, it can be said that raising such issues and doubts, if not driven by bias, stems from a lack of precision. Of course, the failure to properly explain, clearly, transparently, and in contemporary language by Muslim thinkers has also contributed to the formation of these doubts. Therefore, by providing a correct and precise explanation of concepts like the notion of law in an Islamic state according to Imam Khomeini's jurisprudential-political thought, such doubts and issues—which can essentially be described as the primary conflict between the concept of modern law and the concept of law in an Islamic state—can be resolved. Additionally, by identifying and emphasizing the areas of conflict between the concept of general will and its place in modern law, as well as the functioning of the modern legal system, Western thought in this area should be held accountable.

At the end, by presenting the following table, we will outline the key points of attention regarding law in modern thought and law in the Islamic state according to Imam Khomeini's thought:

No.	Law in Modern Thought	Islamic State Law in Imam Khomeini's Thought
1	The basis of the validity of rules in modern law is humanistic rationality.	The basis of the validity of rules in Islamic law is the will of the Lawgiver.
2	The general will is considered both the spirit of the law and the spirit of the legislative power. (Rousseau) The law of practical reason is rooted in the absolute matter, meaning the will of man. (Kant)	The centrality and content of all matters in an Islamic society should be based on divine law.
3	The law expresses the will of the public; from the perspective of modern legal systems, the law is the product of the public will and the declaration of individuals' will. Therefore, the will is the will of the people themselves.	According to Imam Khomeini, the form of government is subject to the temporal and spatial requirements determined by the people, but its content is formed by the laws and rulings of Islam.
4	The general will is recognized as an important element in modern legal systems, and the concept of law plays a key role in the emergence and survival of government and the state.	Article 6 of the Constitution of the Islamic Republic of Iran refers to public votes, and according to this article, the affairs of the country must be managed based on public votes.
5	Laws cannot be rooted in religion because individual religion is incompatible with governance and social management, and social religion is also harmful to the government. It deceives people and makes them idolaters.	The sacred legislator has instructed the obligated individuals to establish an Islamic government and implement its rulings, but has left the determination of the form of the Islamic government to the juristic discretion of the scholars and the choice of the people. Based on this, Imam Khomeini, through his juristic reasoning, concluded that the establishment of an Islamic government in today's world is possible in the form of an Islamic Republic.

No.	Law in Modern Thought	Islamic State Law in Imam Khomeini's Thought
6	The positive aspect of modern law centers on the will of individuals as its core, and the management of social changes is based on that will. Its negative aspect involves discarding anything that opposes or contradicts this will.	According to Article 56 of the Constitution of the Islamic Republic of Iran, the sovereignty of the people is exercised within the framework of divine sovereignty. In other words, it can be said that the Islamic character of the system sets a limit on its republicanism.
7	In modern law, the will of individuals in society stands in opposition to the will of the wise divine Lawgiver. According to the foundations of the modern legal system, it is the human will that ultimately prevails in this confrontation.	In religious democracy, democracy signifies the concrete realization of the human right to self-determination in this worldly life, while religion represents the presence of the Divine (Truth) in both individual and collective human life.
8	According to this perspective, religion and Sharia are seen as flawed elements that are incapable of governing or managing society.	Government represents the practical dimension of Islamic jurisprudence in addressing all social, political, military, and cultural challenges. The law referred to in the Islamic legal system—responsible for organizing society, managing social affairs, and establishing justice—is not man-made, although it certainly does not ignore human input. Rather, it is formed around the will of the wise divine Lawgiver.
9	Law is defined as a regulation enacted by a competent authority, which the individuals subject to it are obligated to follow.	Law is a proposition that aligns with, or at least does not contradict, Islamic teachings and rulings. It is established by a competent authority with the aim of managing society and serving the public interest.
10	The fundamental principles of modern law include: the rule of law, human rights, justice (in the sense of equality), separation of religion and state, separation of powers, international law, attention to technology, environmental rights, economic and social rights, accountability and transparency, and adaptability.	The fundamental principles of Islamic law from the perspective of Imam Khomeini include: the sovereignty of Sharia, the Guardianship of the Jurist, dynamic ijtihad (independent reasoning), social justice, individual and social rights, independence and self-sufficiency, resistance against colonialism and despotism, popular participation, preservation of the public interest, and the adaptation of laws to the conditions of time and place. These principles enable Islamic law to function as a dynamic and responsive legal system capable of addressing the needs of an Islamic society.

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