

The Scope of Divine Legislation in the Islamic State in Sadr's View

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Abstract

The present article elucidates one of the most pivotal jurisprudential-political theories of Sayyid Muhammad Baqir al-Sadr, designed to address the evolving needs of societies within the framework of the Islamic state. The fundamental issue in Sadr's thought is how to establish a balance between eternal divine rulings and the emerging necessities arising from the developments of time and place. By introducing the concept of the "Sharia Lacuna" (*Mantaqat al-farāgh*, or discretionary zone), he initiated a structural transformation in the field of legislation, through which Islamic Sharia is redefined not as a static system, but as a dynamic and responsive one. In this perspective, Islamic rulings are divided into two general categories; the first category comprises fixed rulings (*al-ahkām al-thābita*) enacted based on innate and permanent human needs, which do not change under any circumstances. The second category, however, is a sphere where the Divine Lawgiver has not issued a definitive mandatory ruling (obligation or prohibition) and has established the principle of permissibility and freedom of action, enabling the Guardian of the Affair (*Walī al-Amr*) or the Islamic state to enact appropriate laws based on public interest (*maṣlaḥa*). Sadr emphasizes that this "legislative silence" does not signify a deficiency in religion, but rather demonstrates the perfection of Sharia and its high capacity to accommodate human progress. In fact, the Sharia Lacuna is an area of social relations, particularly in economic spheres and human interaction with nature, which, due to changes in tools and the complexities of human relations, requires temporary and variable laws. Using a descriptive-analytical method, the authors of the article elucidate how Sadr distinguishes between the Prophet's status of Messengership and his status of Guardianship; in the sense that a portion of the Prophet's commands were issued not as a conveyer of fixed divine rulings, but in his capacity as the ruler and manager of society to fill the Sharia Lacuna, which remains subject to change by subsequent rulers. This

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theory increases the legislative capacity of the Islamic state in the face of historical transformations and allows the Guardian to enact secondary regulations while observing the general principles and criteria of religion. From Sadr's perspective, the realm of the Sharia Lacuna primarily encompasses actions that are inherently permissible (mubāh) according to Sharia, for which no evidence of permanent obligation or prohibition exists; thus, the ruler can prohibit or mandate these matters by assigning them a secondary attribute. A significant point in Sadr's thought is the link between this theory and the role of the people in the Islamic state. Unlike certain traditional interpretations, he does not restrict legislation in this sphere solely to the Guardian, but maintains that in the Islamic system, the people also participate in filling this legislative gap through their elites and experts. This popular participation is realized within the framework of the theory of the "Succession of Man," which, alongside the "Witnessing and Supervision of the Jurist," constitutes the structure of the Islamic state. Thus, the Sharia Lacuna provides a platform for the Islamic state to establish a link between the sublime goals of religion and the objective realities of social life. The factors of change in this sphere include social custom, public interest, and the extent of human mastery over nature, all of which necessitate rapid and flexible legal responses. Ultimately, this research demonstrates that the theory of the Sharia Lacuna is not only consistent with the eternity and comprehensiveness of Sharia, but also serves as a rational solution for escaping jurisprudential stagnation and providing the necessary tools for achieving social justice in all eras. This approach grants the legal system of the Islamic state greater flexibility and allows it, while remaining faithful to fixed texts, to respond to the changing needs of the contemporary world and systematically increase the state's capacity to react to international and domestic developments. The result of this process is the creation of a legal structure in which fixed religious values are operationalized and implemented within a framework of variable and efficient rulings.

Keywords

scope of legislation, Sharia lacuna, Islamic state, Sadr.

1. Introduction

Sadr was consistently striving to clearly define the position of divine legislation in social life and to elucidate the sphere of legislation within the Islamic state. He sought to provide a precise answer to the question of what the relationship is between governmental decrees and legislation. Governmental decrees are those rulings issued by the ruler in light of the specific circumstances and requirements of Islamic society, aimed at resolving the community's issues and problems, as [delegated] by the Divine Lawgiver. In this regard, a fundamental question arises: does the nature of governmental decrees inherently possess a legislative aspect or not? In response to this question, there are two primary perspectives, each offering a distinct understanding of the nature and function of these decrees: the first orientation does not accept the application of the term "legislation" to the decrees issued by the Islamic ruler and maintains that "there are many narrations that state the right of legislation for the Prophet and the Imams, but they do not establish such a right for the Jurist-Guardian" (Momen, 2005, p. 364). Although this orientation does not consider the nature of governmental decrees to be of a legislative type, in light of the theory of the Absolute Guardianship of the Jurist, it regards the scope of the Jurist-Guardian's authorities as broad, extending it to the realm of enacting laws; among the authorities of the Jurist-Guardian, it enumerates the enactment of mandatory laws within religious rulings and considers this to be among the requirements of guardianship (Momen, 2004, Vol. 1, pp. 316-317, 319). The second orientation is that which has appeared in the form of the "Sharia Lacuna" (*Manṭaqaṭ al-farāgh*) theory and possesses a deep connection with governmental decrees, the authorities of the Islamic ruler, and the category of legislation, which is among the innovations of Sadr. One of the authorities of the state and the Islamic ruler is the issuance of governmental decrees. This decree can be for the purpose of implementing Sharia rulings or in the capacity of administering the country. In terms of subject matter, it may concern a specific person or case and be issued as a particular command; or it may concern a general category, in which case it is considered a general ruling. Furthermore, a governmental decree can possess the aspect of enacting law. Hence, the legitimacy of the governmental decree is not unrelated to the theory of the Sharia Lacuna, although the existence of one does not negate the other. In other words, the governmental decree pertains to the authorities of the Islamic ruler, whereas the Sharia Lacuna pertains to a portion of the sphere in which the Islamic ruler can engage in legislation; even though the ruler can also take action to issue

decrees in the fixed sphere regarding implementation or conflict of rulings (Raei and Hosseini Ghalandari, 2012, p. 34). Other thinkers have also proposed similar views; Muḥammad Ḥusayn Nāʾīnī, regarding the sphere of legislation, referred to stipulated and non-stipulated rulings (Nāʾīnī, 1999, p. 80), and Allameh Tabatabai considered "particular rulings related to current events, which change rapidly due to the passage of time, to be among the authorities of the Islamic ruler" (Tabatabai, 1996, Vol. 4, p. 129). However, what distinguishes the theory of the "Sharia Lacuna" is the elucidation and delimitation of a specific zone in which, due to its evolution, transformation, and lack of stability, the ruler and the Islamic state can engage in legislation based on the principles, criteria, and goals of Islam. Based on this conception, the "Sharia Lacuna" refers to a sphere of Islamic Sharia where, due to its variable nature, the rulings governing subjects and titles can be flexible. The Divine Lawgiver has entrusted the enactment of rules appropriate to the circumstances and requirements of time and place to the Guardian, provided they remain within specific criteria and frameworks. The Prophet of Islam, by virtue of being the Guardian in addition to being the propagator of Sharia, personally engaged in enacting rules within this zone—rules which possess the capacity to be altered by subsequent Guardians. An important consequence of this is that the Guardian and the Islamic state, when dealing with such rulings and the narrations reporting them, do not regard them as fixed; rather, while observing the established criteria, they engage in legislation themselves. In any case, this concept pertains to the authorities of the Guardian for the purpose of issuing governmental decrees. The wisdom behind establishing this realm within the Islamic social system is to ensure that religion remains responsive across all eras and through the transformations of every age. Thus, variable rulings constitute the specific segment delegated to the Guardian, enabling him to determine the appropriate ruling in accordance with the interests of the Ummah, while drawing inspiration from the fixed realm of Sharia. According to Sadr, in addition to variable needs, human beings possess fixed innate (*fiṭrī*) needs, and the fixed rulings of Sharia are, in fact, responses to these constant human requirements. He maintains that just as time and place influence variable rulings, they also impact fixed rulings; however, this influence is limited to the subject matter and the application to specific instances, while the principles of the ruling remain theoretically fixed. This is in contrast to variable rulings, where time and place directly influence the ruling itself. In order to systematize human social life, Sadr addressed the issue of fixed and variable rulings more or less throughout his works. He considers

Islam to possess a comprehensive program for managing both the worldly life and the hereafter of mankind, maintaining that Islam does not separate the two but rather examines them in relation to one another. In his view, the realm of religion is vast and encompasses all individual and social affairs of human beings. He believes that within Islamic texts, there is a wealth of material capable of responding to the needs of the contemporary world, social values, and the promotion of global justice, with an emphasis on brotherhood and equality. According to his belief, by examining Islamic texts, it is possible to respond to the social needs of the modern era and, through the enactment of variable laws, implement a portion of divine values within current and future society. He addressed this issue in a coherent and codified manner, notably in his jurisprudential elucidation of the Constitution of the Islamic Republic of Iran (*Lamḥa fiqhīyya tamhīdīyya ‘an mashrū’ dustūr al-jumhūrīyya al-Islāmīyya fī Irān*) and particularly in his valuable work *Iqtisādunā*, thereby clarifying its ambiguities (Sadr, 1996, p. 721). To understand this theory and its capacities for expanding the legislative sphere, we pursue the discussion in four stages: examining the basic concepts, the scope, and the implications of the Sharia Lacuna. The primary question is: based on Sadr’s perspective, what is the position of the Sharia Lacuna theory in expanding the legislative realm of the Islamic state? The article’s hypothesis emphasizes that Sadr, by simultaneously attending to the fixed and variable elements in religious rulings and by proposing the Sharia Lacuna theory, has expanded the legislative domain of the Islamic state such that legislation is not limited solely to the Guardian, but the role of the people also gains significance in filling this legal sphere. Consequently, through the flexibility of the Sharia Lacuna theory, the possibility of legislation proportionate to the requirements of time and place has been established, and the capacity of the Islamic state to respond to social transformations and the needs of society has increased.

2. The Concepts

To elucidate this theory, let us first examine the fundamental concepts involved therein.

2-1. Ruling (*Ḥukm*)

Linguistically, the term *hukm* (ruling) has been used in various senses that can be summarized into three meanings: restraint, judgment and arbitration, and command or decree (Iṣfahānī, 2008, p. 125; Ibn Athīr, 2000, Vol. 1, p. 420; Dehkhoda, 1919, Vol. 19, p. 753). Upon careful consideration of these

meanings, their common element can be expressed as follows: *hukm* signifies an obligation or compulsion imposed on another that entails their commitment and acceptance. Sadr writes: "Sharia regulations are the enactment of law issued by God the Glorified for the stability of human life; the addresses (*khiṭābāt*) of the Lawgiver in the Book and the Sunnah are not the ruling itself, but rather indicators (*kāshif*) of the Sharia ruling" (Sadr, 1994, p. 101). Sadr's emphasis in this definition—that the Lawgiver's address is an indicator of the Sharia ruling rather than being the ruling itself—alludes to the definition of the predecessors, who define the Sharia ruling as the Lawgiver's address pertaining to the conduct of the legally responsible (*mukallaḥ*). As al-Shahīd al-Awwal writes: "A ruling is the command of the Lawgiver pertaining to the actions of the legally responsible, whether in the form of a requirement (*iqṭidā'*) [i.e., obligation or prohibition] or choice (*takhyīr*) [i.e., permissibility]" (ʿĀmilī, n.d., Vol. 1, p. 39). Considering the linguistic meanings of *hukm* and its technical applications in jurisprudence, a sense of requirement (*ilzām*) and commitment (*iltizām*) is inherent in the concept. In the terminology of jurists, *hukm* is used in four senses: a specific religious obligation, absolute religious obligation, judicial decrees, and the commands of the leader. In this research, our focus regarding *hukm* is on the second and fourth types—absolute religious obligation and the commands of the leader—because we discuss both the rulings enacted by God and the commands issued by the Prophet and the Imams.

2-2. Fixed Rulings (*Aḥkām Thābita*)

Linguistically, the term "thābit" (fixed) signifies that which is established, firm, rooted, and enduring. Something that is unaffected by doubt, remains untouched by uncertainty, and is perpetually present is referred to as fixed, stable, and imperishable. In jurisprudential terminology, "fixed rulings" refers to that category of regulations and laws enacted by the Lawgiver as part of the religion of Islam, which remain in force for all times and places (Tabatabai, 2008, Vol. 1, p. 82). Consequently, those Sharia rulings that do not change under any circumstances of time or place are called fixed. Regarding the issue of the fixed and the variable in religion, Sadr maintains that divine rulings are fixed and immutable; the rulings that undergo change are governmental decrees, the obedience to which is considered obligatory (Sadr, 1983b, p. 159).

2-3. Changeable Rulings (*Aḥkām Mutaghayyira*)

Linguistically, the term "taghyīr" (change) signifies transformation and

displacement; it refers to "evolving, altering, departing from a desirable and constructive environment, or lapsing into corruption and decay" (Ibn Athīr, 2000, Vol. 3, p. 401). In jurisprudential terminology, this term is applied to any ruling that has been enacted and established for a specific situation. Consequently, certain rulings are issued in accordance with particular conditions and environments and will undergo change under different circumstances.

3. Factors Contributing to Change in Sharia Rulings

According to Sadr, the following factors lead to changes in divine rulings.

3-1. Custom

The subject matter of certain Islamic rulings consists of titles whose instances are determined by custom (*'urf*); thus, if the custom of a society undergoes transformation, the corresponding ruling also changes. For example, regarding conditions stipulated within a contract, the Sacred Sharia has delegated the identification of what constitutes such a condition to the custom of society (Mohaghegh Damad, 2009, p. 283).

3-2. Change of Circumstances and Public Interests

Certain rulings are issued in accordance with specific social conditions. This means that a ruling is determined within a particular society while preserving the collective interests of the masses, yet it will undergo change under different circumstances. For example, the Messenger of God commanded the people of Medina to provide others with their surplus water and fodder and prohibited withholding them (Kulaynī, 2010). In this narration, to realize an objective that serves the benefit and welfare of the masses, the state declares a surplus—which is an otherwise permissible (*mubāḥ*) act—to be obligatory. This ruling pertained to the specific conditions of that era, rather than being applicable to all times. Regarding this, Sadr writes: "Despite the fact that Sharia rulings are fixed regulations, the application of these rulings sometimes changes following a transformation in circumstances" (Sadr, 1983b, Vol. 1, p. 97). Accordingly, transformations and shifts in social conditions lead to a change in interests, which in turn results in a change in the ruling. Regarding this, Sadr writes: "When we examine human desires, it becomes clear that within these needs there is a fixed and fundamental dimension, while other dimensions are variable, changing and renewing alongside the transformation and modernization of time according to differing conditions. Variable needs

are those that a human being gradually encounters on the stage of life; the more experience and knowledge one gains in life, the more these particular needs grow. Therefore, universal needs are fixed, while situational elements are innovative and subject to change." Subsequently, he concludes that "a social system worthy of humanity must not be entirely variable and shifting in order to keep pace with the growth and development of social life, just as it is not rational for both the principles and the details of a social system to be cast in a fixed mold. Rather, it is necessary for a social system to have one fixed dimension and other variable and fluid dimensions, so that each part is reflected within a proper social system. Therefore, the Sharia rulings formulated to respond to human needs must—like human needs themselves—possess two components: the fixed and the variable" (Sadr, 1987, p. 339). Now, do the rulings issued by the leaders of the religion consist of two parts, the fixed and the variable, or not? Regarding this, Sadr writes: "And this is the full reality concerning the social system of Islam" (Sadr, 1987, p. 324). An examination of the structure of rulings and the social system of Islam reveals that Islamic Sharia is composed of two fundamental sections: one category of rulings is fixed and enduring, addressing the permanent and foundational needs of humanity—such as securing livelihood, preservation of lineage, physical and financial security, and the existential connection with God Almighty. Given the nature of these needs, this category of rulings possesses stability and is not subject to change. In contrast, another category of rulings has a variable aspect and possesses flexibility in the face of social transformations and the requirements of time and place. In this realm, Islam has authorized the Guardian of the Affair to enact the necessary laws while observing public interests and based on the general rules of Sharia. This distinction between fixed and variable rulings laid the groundwork for the theory of the "Sharia Lacuna" in Sadr's thought, providing a framework for the rational development of Islamic legislation through the participation of the leader and the community.

3-3. Sharia Lacuna

Sadr introduces the variable and flexible portion of Islamic regulations under the title of "the Sharia lacuna." This sphere signifies an area void of binding Sharia rulings, such as strict obligation (*wujūb*) or prohibition; in this sense, the primary principle in this domain is permissibility, and the Sacred Lawgiver has not issued any binding decree that remains mandatory for all times and conditions. Any binding ruling in this field is based solely on specific

situational requirements of time and place and possesses a transitional and temporary nature. This concept demonstrates the flexibility and dynamism of Islamic Sharia in responding to the changing needs of society; Sadr regards it not as a deficiency, but as one of the prominent merits of Islam, which facilitates the adaptation of rulings to the transformations of time and space. Therefore, Sadr does not regard the Sharia lacuna as a point of weakness or a deficiency in the Sharia; rather, he considers it one of the merits of Islam and a sign of the religion's perfection and flexibility. He writes: "The discretionary sphere does not indicate a defect or flaw in the form and structure of the Sharia, nor does it suggest that some events and incidents have been left neglected by the Sharia; rather, it expresses the Sharia's capacity to keep pace with different eras" (Sadr, 1987, p. 725). This is because the Sharia has not left the discretionary sphere in an incomplete or neglected state; instead, by assigning an original Sharia characterization and ruling to every emerging matter, the Sharia has clarified the regulations of this domain through the discretion of the Guardian of the Affair and in accordance with varying conditions. For instance, land cultivation is religiously permissible, yet the Sharia ruler possesses the authority to prohibit it in accordance with contemporary conditions or to command the cultivation of a specific crop. Therefore, the existence of the Sharia lacuna within Islamic rulings does not imply that emerging phenomena are devoid of Sharia regulations; rather, it is considered one of the merits and the perfection of Islam, and thus cannot be regarded as a deficiency of the Sharia. The theory of the discretionary sphere seeks to identify a realm of human relations that, due to its variable and dynamic nature, lacks a fixed Sharia ruling. By distinguishing between the spheres of fixed and variable rulings, this theory attempts to provide a basis for legislation in cases where Islamic Sharia has not directly issued a permanent, binding decree.

To prove this theory and clarify the legislative role of the Guardian of the Affair, the people, and the Islamic state, three fundamental premises must be established: First, the relationship between human beings and nature, as well as social relations, is constantly changing and lacks stability. Second, in such a domain, the legislation of fixed and timeless rulings is rationally impossible, as they cannot respond to shifting conditions. Therefore, the only reasonable way to fill this void is to delegate the matter of legislation to the Guardian of the Affair, the people, and the legitimate institutions within the Islamic state. Third, even if this method were not the only possible way, it can be demonstrated that the Wise Legislator has consciously chosen this approach

and, through legislative silence in this sphere, has effectively delegated the authority of legislation to the Islamic system. Proving the existence of an evolution in the human relationship with nature is not particularly difficult, as we clearly observe that the increase in human capacity to master nature has significantly transformed this relationship. This transformation does not merely refer to the difference between humanity of the past and the present in terms of utilizing industry and technology; rather, it refers to the evolution and change of Sharia rulings arising from the expansion of human power and capability. Crucially, this transformation is of such a nature that enacting fixed laws in this domain becomes possible only through the delegation of legislative authority to the Islamic state. Furthermore, even if enacting fixed laws were not impossible, it must be proven that the Wise Legislator has indeed entrusted this discretion to the Islamic ruler.

It can be claimed that the Wise Legislator has enacted a comprehensive legal system whose flexibility is embedded either within the essence of the laws themselves or at the stage of implementation. This means that laws possess primary and secondary rulings formulated in a general and universal manner to cover various situations and conditions. Within this framework, the duty of the Islamic ruler is to apply these general rules to concrete instances. During the stage of application, conflicts or overlaps between secondary rules may occur, in which case the final decision rests with the Islamic ruler. Consequently, while Sharia rules and laws remain stable, change and transformation manifest in their subject matter and titles.

In support of this perspective, two types of arguments may be presented: first, reliance on hadiths that attest to the comprehensiveness of the rules. Al-Shaykh al-Kulaynī records these narrations under the title: "Chapter on Referring back to the Book and the Sunnah, and that there is nothing of the permissible and the forbidden, and all that people need, except that a Book [verse] or Sunnah has been revealed concerning it." For instance, one narration is cited: "God, Blessed and Exalted be He, sent down in the Quran the explanation of everything, to the extent that—by God!—He left out nothing of the servants' needs; so much so that no servant can say, 'I wish this had been revealed in the Quran,' except that God has indeed sent it down in the Quran" (Kulaynī, 1984, p. 77).

In response, it may be argued that these narrations refer to the legal system in its entirety—including all its objectives, rules, principles, and criteria; for within a legal system, one can utilize foundations, principles, and standards to discover behavioral rules, rather than requiring every single ruling to be

explicitly stated in the form of Sharia propositions. This point is further supported by other narrations. Imam al-Sadiq states: "There is no matter over which two people disagree except that it has a root and foundation in the Book of Allah, but the intellects of men cannot reach it" (ibid, p. 78). In short, the aforementioned narrations are consistent with both perspectives and cannot be used to refute the viewpoint of the Sharia lacuna. The second method for arguing against Sadr's theory is to practically resolve all the cases he addresses through legislation in the Sharia lacuna by instead applying existing rules and extracting the necessary rulings (Mojtahed Shabestari, 2000, pp. 314-315; Alidoost, 2009, p. 199). For this reason, it cannot be proven that the sole way of legislating in the discretionary sphere is to delegate it to the Guardian of the Affair; consequently, what remains is the third approach: that among the various solutions for addressing the "sphere of evolution," the Legislator has accepted the method of legislation by the Guardian of the Affair and the state. In proving such a claim—namely, the "comprehensiveness of Sharia through the endorsement of the discretionary sphere"—Sadr relies on instances of Sharia texts that indicate the enactment of laws by the Guardian of the Affair. Furthermore, he considers the discovery of the Islamic economic school to be incomplete without taking into account the discretionary sphere and its capacities (Hekmatnia, 2010).

4. Legislative Scope of the Islamic State

As previously stated, Islamic social regulations consist of two parts: fixed and variable. The variable rulings constitute the sector delegated to the Guardian of the Affair within the Islamic state, allowing their rulings to be determined through a specific legislative process in accordance with the interests of society and inspired by the fixed domain of religion. Sadr has termed this part of the social system the Sharia lacuna, meaning that this area is devoid of mandatory rulings (obligation or prohibition), and its primary ruling is permissibility. The Guardian of the Affair is granted the authority to declare such matters obligatory or prohibited by considering the requirements of time and place and the macro-interests and benefits of society. This is because the religion of Islam is not restricted to a specific era but is intended for all times; thus, it does not formulate its legislative principles in a time-bound or temporary manner that would eventually necessitate a different system. On the other hand, social conditions and developments do not accept a fixed system. Consequently, it is necessary for the theoretical framework to not only be universal and globally applicable to all eras but also to reflect the evolutions of

all times through changeable rulings. This dynamic element injects the social system with the capacity to move in step with the transformations of human life and respond to the ever-increasing needs of mankind, ensuring that emerging phenomena and new issues do not turn the Islamic system into an inefficient and obsolete one (Zamani, 1995, p. 231). This same approach—namely, the discretionary sphere—has also been raised regarding the various capacities of the Prophet. Regulations expressed through the capacity of Prophethood and Sharia texts constitute fixed rulings; however, the discretionary sphere applies to the social system established by the Messenger of God during his own time. This is because the system the Prophet implemented in his era was in accordance with the conditions of that time, and he filled that sphere with those specific rulings.

As is evident, the noble Messenger of Islam held various capacities during his prophethood, or in Sadr's terms, he possessed two distinct roles:

1) The capacity of Prophethood and Message: In this role, he received the rulings of religion through the channel of revelation and conveyed them to his community.

2) The capacity and role of *Wilāya* (Guardianship/Authority): In his capacity as the Guardian of the Affair, he issued commands based on the interests and benefits of the Ummah, intended to preserve the existing order and implement social justice. Rulings issued from his capacity of Prophethood are fixed and universal, pertaining to all people across all times and places, and are not restricted to any specific era. However, the regulations conveyed from his second office—namely, as the Ruler of Medina—are specific to that era. Sadr, while explaining the aforementioned point, concludes: "The types of laws with which the Messenger of God filled the free zone of the economic school are not universal rulings; for these commands were not issued by the Prophet in his capacity as the conveyor of fixed regulations, but rather in his capacity as the Guardian of the Affairs of the Muslims" (Sadr, 1988, p. 401).

Accordingly, the aforementioned rulings are not considered fixed regulations of religion; however, they play an effective role in filling the "discretionary sphere" and must be implemented in each era according to the existing conditions. Therefore, as previously stated, the *raison d'être* of this sphere is the delegation of a portion of Sharia commands to the Guardian of the Affair. Sadr writes in this regard: "Since the religion of Islam is not restricted to a specific period but encompasses all eras, it has not legislated the legislative principles of economic life as a time-bound matter or a temporary system such that it would require another system after a while; rather, it has

designed it in a framework that can be applied to all times, whereas social developments do not tolerate a [completely] fixed system and school" (Sadr, 1988, p. 722). Therefore, the secret behind incorporating a "free jurisprudential sphere" into the Islamic social system is to empower it to confront the transformations that occur throughout different historical periods. The existence of the Sharia lacuna and the presence of variable elements within religion ensure the comprehensiveness and dynamism of this system across all eras. This provides the capacity and potential to move in step with emerging phenomena and new developments toward the advancement of human life, responding to the ever-increasing challenges and dilemmas of mankind in all fields. From the preceding discussions, it becomes clear that the discretionary sphere is completed in every time period based on the conditions of that era and through the issuance of rulings aligned with the public interest. This grave responsibility has been delegated to the Guardian of the Affair. The prominent and clear manifestation of the Guardian of the Affair at the dawn of Islam was the person of the Prophet himself; after him, the Infallible Imams held this responsibility to cover this vacant sphere with regulations suited to the exigencies of their time. In the era of Occultation, this responsibility has been entrusted to fully qualified jurists to manage and legislate. While fixed rulings are applicable and implemented across all times, the period for implementing variable rulings expires with the passing of the eras of Prophethood and the Imamate and the changing of circumstances. Consequently, with the emergence of new conditions, new rulings must be enacted. On this basis, verse 59 of Surah al-Nisa designates an authority for issuing such regulations, stipulating obedience to the Guardian of the Affair following obedience to Allah and the Messenger of Allah: "O you who have believed, obey Allah and obey the Messenger and those in authority [guardians of affairs] among you" (al-Nisa, 59).

In his book *Iqtisādunā* (Our Economics), Sadr addresses the scope of the *Walī al-Amr*'s authority. He believes that the sphere of the *Walī al-Amr*'s powers encompasses any action that is inherently permissible from the perspective of Sharia. Consequently, actions for which there is no Sharia evidence indicating obligation or prohibition fall under the authority of the Guardian of the Affair, who may assign them a secondary status—that is, by either forbidding their performance or commanding it. However, regarding actions that Sharia has universally prohibited or mandated—such as usury or the maintenance of a spouse—the Guardian of the Affair has no right to intervene in this domain; for obedience to those in authority is mandatory

[only] within a framework that does not conflict with obedience to God Almighty. Therefore, the types of activities that occur in the everyday lives of individuals constitute the Sharia lacuna, over which the Wali al-Amr possesses authority. Conversely, cases where the primary rulings are obligation, prohibition, detestability, or recommendation fall outside the jurisdiction of the Guardian of the Affair. Sadr mentions examples in which the Guardian of the Affair utilized the Sharia lacuna to implement his directives. For instance, during his period of authority, Imam Ali advised his governor regarding merchants: "Know that among merchants, there are those who are narrow-minded, difficult in dealings, stingy, and hoarders; they think only of their own profit through coercion and sell goods at whatever price they desire. This profiteering and overcharging are harmful to all members of society and a great flaw in a ruler. Therefore, prevent the hoarding of goods, as the Messenger of God used to prevent it. Buying and selling in the Islamic society must be conducted with ease and according to the standards of justice, at rates that do not harm either the seller or the buyer" (Nahj al-Balagha, Letter 53). The Imam's command to fix the prices of goods and his prohibition against merchants selling at high prices were issued in his capacity as the Guardian of the Affair; thus, the Imam's directive utilizes the discretionary sphere to align rulings with the exigencies of time and place and the requirements of social justice (Sadr, 1988, p. 728). Now, it remains to be seen whether these fixed rulings are influenced by temporal and spatial conditions or not. In response, it must be said that while these rulings are indeed affected by time and place, this influence is not the same as it is for variable rulings. This is because, within the domain of variable rulings, there is no perpetual mandatory ruling; rather, the inherent ruling is one of permissibility and adaptability. The Islamic ruler determines a specific mandatory ruling according to the current circumstances and based on the emergent interests of society. As a result, the ruling changes based on the determination of the Guardian of the Affair and the interests of society. However, in the case of fixed rulings, time and place do not play such a role, and the Guardian of the Affair has no entry into the domain of fixed rulings; that is, he has no right to issue a ruling for the prohibition of something whose original Sharia ruling is obligatory, or vice versa. Nevertheless, in Sadr's view, time and place are influential in the application of fixed rulings to their subjects. This means that the course of history and the passing of days play no role in changing or transforming the "obligatory" and the "prohibited," but they do influence the identification of the instances—whether a specific action is an instance of the obligatory or the

prohibited. For this reason, Sadr believes that "despite the fact that the regulations of Sharia are fixed, their application varies from one era to another following temporal and spatial conditions. Therefore, these transformations must be taken into account when identifying the Sharia ruling" (Sadr, 1983, Vol. 1, p. 97).

5. Implications of Sadr's Notion of the Sharia Lacuna

Given the above discussions, let us examine the major implications of this theory in what follows:

5-1. The Sharia Lacuna Being Concerned with Human Relations with Nature

Sadr distinguishes between two distinct categories of relationships. The first category concerns the relationships of individuals with one another. In his view, the relationship of a human with their "brother" and fellow human is naturally fixed and does not undergo evolution (Sadr, 1988, p. 686). The second category concerns the relationship between man and nature. This type of relationship involves change and evolution; that is, the rules change in accordance with the shifts that occur in human power and the extent of man's mastery over nature. Therefore, this sphere is vacant of fixed legislation and is filled by the legislation of the Guardian of the Affair and the Islamic state. "Sadr not only restricted the scope of the Guardian of the Affair's legislation to the relationship of man with nature, but also conditioned it upon the absence of a legislative text signifying an obligation to act or refrain, regarding it as 'secondary legislation'" (Alidoost, 2009, pp. 204–205).

5-2. Permissibility of the General Ruling of the Sharia Lacuna

The primary principle regarding actions is permissibility rather than prohibition or restraint. Furthermore, even in instances where the possibility of a religious obligation exists, the principle of Sharia exemption applies, meaning that no duty is imposed on the individual in practice. Although Sadr—based on the "Right of Obedience" (*Haqq al-Ṭā'ā*) doctrine—believes that "God's inherent sovereignty is not limited to obedience regarding certain obligations but extends to potential ones as well; nevertheless, in light of Sharia evidence such as 'Allah does not charge a soul except with that which He has given it' (al-Talaq, 7), he considers the obligation nullified and practically accepts the ruling of exemption" (Sadr, 1994, p. 37). Therefore, the primary rule and practical principle for actions—including subjects within the

Sharia lacuna—is permissibility. However, the Guardian of the Affair, while observing specific criteria, can transform this permissibility into prohibition or obligation. On this matter, Sadr writes: "Every action is legislatively permissible; therefore, for any activity or deed for which no legislative text indicates prohibition or obligation, the Guardian of the Affair can forbid or command it by assigning it a secondary status" (Sadr, 1988, p. 689). It is quite possible that the Prophet, by virtue of his station of guardianship, may have prohibited or commanded something that was not a fixed legislative text, but rather was considered a governmental decree and is subject to change as conditions evolve.

5-3. Incompatibility of the Theory with Evidence for Legislative Permissibility

The scope of the Guardian's authority within the Sharia lacuna is the mandate of matters for which no legislative text exists to signify their obligation. It might now be claimed that this interpretation lacks the necessary harmony with certain verses and traditions, as some specifically emphasize the status of permissible acts. For instance, God says: "O you who have believed, do not prohibit the good things which Allah has made lawful to you" (al-Ma'ida, 87). Consequently, it could be argued that in the presence of such evidence, the Guardian of the Affair cannot make permissible things prohibited or obligatory, except in cases of conflict, which itself is unrelated to "permitting the forbidden" or "forbidding the permissible." However, this objection is invalid; for the theory of the discretionary sphere asserts that certain human relationships are inherently evolutionary, and God has entrusted the method of legislating for them to the Islamic ruler by defining specific principles and criteria.

5-4. Incompatibility of the Theory with the Eternity of the Sharia

In various traditions, the rulings of Islamic Sharia are described as eternal; one narration states: "The lawful of Muhammad is lawful until the Day of Resurrection, and the forbidden of Muhammad is forbidden until the Day of Resurrection" (Ḥurr al-'Amilī, 1991, Vol. 21, p. 169). Furthermore, in opposition to "ijtihad by personal opinion," Imam al-Sadiq says: "They lie; there is nothing except that its [ruling] exists in the Book and the Sunnah" (Nūrī Ṭabarsī, 1994, Vol. 17, p. 258). It might be argued that the theory of the Sharia lacuna conflicts with both aforementioned categories of traditions. This is because, under this theory, the Guardian of the Affair legislates—the result

of which would be "prohibiting the permissible"—and additionally, the very concept of a "discretionary sphere" fundamentally contradicts the comprehensiveness of Sharia. However, upon closer inspection, it becomes clear that the theory of the Discretionary Sphere has no conflict whatsoever with these two categories of traditions; for the discretionary sphere concerns subjects that are not inherently fixed and do not possess a permanent ruling. The Wise Legislator has entrusted the formulation of rules for these subjects to the Guardian of the Affair; it is not the case that a fixed ruling was enacted and the ruler seeks to change it. Regarding the comprehensiveness of religion, it should be noted that these traditions intend to negate "ijtihad by personal opinion" and "analogy" (*qiyās*), which were widespread during a certain period in the history of jurisprudence. At that time, individuals would engage in analyzing the Sharia and extracting rulings based on personal taste and preference, without any formal criteria. On the other hand, these traditions delineate the correct criteria and standards for ijtihad within the Book and the Sunnah. The theory of the Sharia lacuna does not claim to operate outside the framework of the Book and the Sunnah or through "ijtihad by personal opinion"; rather, it asserts that God, in the Book, by virtue of the verse "Obey Allah and obey the Messenger and those in authority among you" (al-Nisa, 59), has granted specific authority to those in power and deemed their commands binding. Now, the sphere in which the Guardian of the Affair can exercise his authority encompasses various domains, one of which is variable subjects; therefore, legislation within the Discretionary Sphere is rooted in the Book and finds extensive corroboration in the Sunnah (Hekmatnia, 2010, p. 94).

5-5. The Sharia Lacuna Theory Being Concerned with the Stage of Legislation, Rather Than Enforcement

In legal systems, the stages of legislating law and enforcing law are distinct from one another. Legislation means the validation or identification of legal rules. In this regard, two general perspectives exist: one is that legal rules are conventional in nature and the legislator's task is to posit and enact these rules; the other is that the legislator identifies rules already present in society and declares them for implementation. In any case, the legislator must act in such a way that no conflict exists within the laws and regulations. After the legislative stage, conditions may arise in which individuals cannot implement two rules simultaneously; that is, a conflict of duties occurs between the rules. The situation is the same in the Islamic system: first, there is the legislative

stage during which rules and rulings are validated in relation to hypothetical subjects, followed by the execution stage where individuals apply these rules. It is at this latter stage that the possibility of conflict arises. The theory of the Sharia lacuna pertains to the legislative stage and is unrelated to the execution stage or the issue of conflict. Of course, once laws are enacted by the Guardian of the Affair or the Islamic state, the possibility of conflict may emerge, just as it does with fixed rulings. Therefore, this theory is fundamentally distinct from the issue of the conflict of rulings at the execution stage.

5-6. Sharia Lacuna: The Right to Legislation for the Islamic Ruler and People

Sadr is among those who believe that "the Legislator has granted the right of disposal within the scope of the Sharia lacuna to the Sharia ruler, and the regulation of social conduct rules rests upon him" (Sadr, 1988, p. 401). In his book *Iqtisādunā*, he maintains that the right of disposal within the Discretionary Sphere is entrusted to the Sharia ruler (ibid.). However, from the appearance of some of his statements regarding political theory, it can be inferred that the people also possess the right to legislate within the Discretionary Sphere (Sadr, 2008, pp. 20–21, 24). That is to say, he posits two institutions: one is the institution of the people, for whom he recognizes the status of "Succession," and the other is the status of "Witnessing," which pertains to the Infallibles and the jurists. He believes that the political and social system is formed through the combination of these two. In other words, in governing society, the authority of the Wilayah can be realized alongside the civic participation of the public, allowing social affairs to be managed through an appropriate mechanism. In this context, the participation of a group of trustworthy experts of the people is defined as the involvement of their representatives in the planning and legislative stages. Considering the objective reality of the Islamic Republic, Sadr defines the legislative status of the political system for filling the void of the Sharia lacuna through the participation of the people and their representatives. This is framed while maintaining the authoritative status of the Islamic ruler—sometimes referred to as the *Marja' iyya*—and under the umbrella of his guardianship; likewise, he takes into account the status of inferential ijtihad in this field. Altogether, the authority of the Wali al-Amr can be actualized in the realm of legislation through the participation of these trustworthy elites and by delegating certain governing powers to them (Naeimian, 2011, p. 185). In contrast, there is another interpretation of the Sharia lacuna which maintains that while the

Discretionary Sphere is an arena for the Legislator's intervention, the Legislator has delegated decision-making in this domain to the people themselves. Consequently, where Sharia does not exist, the domain is one of "original permissibility" and "dispensations," and the responsibility for filling it lies with the citizens. In this view, legislation stems from individual consent and agreement; thus, the laws of the Islamic state during the Age of Occultation are divided into two types: a) Sharia laws; and b) generic laws arising from the generic needs of the people, which are not intrinsically "Sharia-based." If the latter are considered Sharia-based, it is by virtue of the principle "Fulfill your contracts," and their validity is contingent upon the citizen's consent and non-contradiction with religious rulings and Sharia (Feirahi, 2009, p. 7). Nevertheless, it seems possible to reconcile these two perspectives, as the people's right to legislate does not occur without the supervision and guidance of the Islamic ruler; naturally, from this standpoint, no law contrary to Sharia would be formed or ratified.

6. Conclusion

Based on the analysis of the legislative status within the Islamic state according to the theory of the Sharia lacuna, the following conclusions can be drawn: Human needs throughout life consist of two categories: one part is fixed and enduring, while the other is variable and dependent on time and place. The origin of the theory of the Discretionary Sphere lies in the distinction between fixed and variable rulings in Islam; therefore, time and space play a fundamental role in the domain of this theory. Consequently, the Sharia regulations of Islam that address human needs comprise both a fixed category—such as devotional rulings (*'ibādī*)—and a variable category. The domain of the Discretionary Sphere is void of binding rulings, and its primary ruling is considered one of permissibility. Factors such as custom, social transformations, and public interests serve as the basis for issuing rulings appropriate to this sphere. The responsibility for completing the domain of the Sharia lacuna rested with the Infallible Guardian, and during the Age of Occultation, it has been entrusted to the fully qualified Jurist-Guardian and, at times, to the people. The Islamic state and ruler issue rulings in this domain by considering the exigencies of the time, the public interests of the Ummah, and consultation with the people. Although some of Sadr's statements in the field of political theory indicate that he also recognizes a right of legislation for the people within the Discretionary Sphere, this popular presence in the legislative arena always occurs under the guidance of the Guardian of the Affair and

within the framework of Sharia standards and rules. Sadr believes that the school of Islam is comprehensive and responsive to all times and places. The theory of the Discretionary Sphere provides scholars and jurists with a high capacity to engage in Islamic system-building based on fixed rulings and the foundations of Shiite political jurisprudence, ensuring the system remains updated and accountable across the span of time. The Wise Legislator has entrusted the task of filling the "sphere of no-text" to the Islamic ruler through general texts and fixed principles, and it is incumbent upon him to implement and operationalize these values and rulings within an appropriate context.

References

The Holy Quran.

Nahj al-Balagha.

- Alidoost, A. (2009). *Fiqh va mašlahat*. Tehran: Research Institute for Islamic Culture and Thought, Publishing Organization. [In Persian]
- ‘Āmilī, Sh. (n.d.). *Al-Qawā'id wa-l-fawā'id*. Qom: Manshūrāt Maktabat al-Mufīd, Vol. 1. [In Arabic]
- Dehkhoda, A. A. (1919). *Lughat-nāma*. Vol. 19. Tehran: University of Tehran. [In Persian]
- Feirahi, D. (2009). *A Comparative Study of the Political Theories of Muḥaqqiq Nā'inī and Martyr Ṣadr*. Fahim Cultural Institute. [In Persian]
- Hekmatnia, M. (2010). An Elucidation of the “Sharia Lacuna” Theory. *Islamic Economy*, no. 8. [In Persian]
- Ḥurr al-‘Āmilī, M. (1991). *Wasā'il al-Shī'a*. Qom: Mu'assasat Āl al-Bayt, Vol. 21. [In Arabic]
- Ibn Athīr, M. (2000). *Al-Nihāya fī gharīb al-ḥadīth wa-l-athar*. Beirut: Dār Ihyā' al-Turāth al-'Arabī, Vol. 1. [In Arabic]
- Iṣfahānī, H. (2008). *Al-Mufradāt fī gharīb al-Qur'ān*. Tehran: Mu'assasa-yi Farhangī-yi Ārāya. [In Arabic]
- Khomeini, S. R. A. (1998). *Ṣaḥīfa-yi Imām*. Tehran: Nashr-i Āthār. [In Persian]
- Kulaynī, M. (1984). *Uṣūl al-Kāfī*. Tehran: Daftar-i Nashr-i Farhang-i Ahl-i Bayt. [In Persian]
- Kulaynī, M. (2010). *Furū' al-Kāfī: Kitāb al-ma'īsha* (M. Rūhī, Trans.). Tehran: Ihyā-yi Kitāb, Vol. 5. [In Persian]
- Mohaghegh Damad, S. M. (2009). *General Theory of Requirements and Commitments in Islamic Law*. Markaz-i Nashr-i 'Ulūm-i Islāmī. [In Persian]
- Mojtahed Shabestari, M. (2000). *A Critique of the Official Reading of Religion*. Tehran: Intishārāt-i Tarḥ-i Naw. [In Persian]
- Momen, M. (2004). *Islamic Divine Guardianship or Islamic Government During the Presence of the Infallible and During the Occultation*. Qom: Islamic Publishing Institute, Society of Seminary Teachers of Qom, Vol. 1. [In Arabic]
- Momen, M. (2005). *The Place of Governmental Decrees and Mandates of the Jurist Guardian* (M. M. Behdarvand, Ed.). Qom: Markaz-i Nashr-i Ṣubḥ-i Mithāq. [In Persian]
- Naeimian, Z. A. (2011). Theory of Sharia Lacuna as a Legislative Origin of

- Governmental Decrees. *Islamic Government*, no. 59. [In Persian]
- Nā'īnī, M. H. (1999). *Tanbīh al-umma va tanzīh al-milla* (S. M. Taleghani, Ed., 9th ed.). Tehran: Shirkat-hā-yi Intishār. [In Persian]
- Nūrī Ṭabarsī, H. (1994). *Mustadrak al-Wasā'il*. Qom: Anṣāriyān, Vol. 17. [In Arabic]
- Raei, M., & Hosseini Ghalandari, S. A. (2012). Governmental Decrees and Sharia Lacunae based on Martyr Sadr's Jurisprudential Thoughts. *Islamic Government*, no. 66. [In Persian]
- Sadr, S. M. B. (1983a). *Al-Sunan al-tārikhiyya fī al-Qur'ān*. Beirut: Dār al-Ta'āruf lil-Maṭbū'āt. [In Arabic]
- Sadr, S. M. B. (1983b). *Al-Fatāwā al-wāḍiḥa waḥdan li-madhhab ahl al-bayt*. Beirut: Dār al-Ta'āruf lil-Maṭbū'āt, Vol. 1. [In Arabic]
- Sadr, S. M. B. (1987). *Iqtisādunā*. Qom: Majma' al-'Ālamī li-l-Shahīd al-Ṣadr. [In Arabic]
- Sadr, S. M. B. (1994). *Durūs fī 'ilm al-uṣūl*. Qom: Mu'assasat al-Nashr al-Islāmī, al-Ḥalqa al-Thālitha, Vol. 2. [In Arabic]
- Sadr, S. M. B. (1996). *Iqtisādunā* (A. Diyā', A. A. Najji, S. M. Hosseini, & S. Akbari, Eds.). Qom: Islamic Propagation Office, Khorasan Branch. [In Arabic]
- Sadr, S. M. B. (2008). Lamḥa fiqhiyya tamhīdiyya 'an mashrū' dustūr al-jumhūriyya al-Islāmiyya fī Īrān. In *Al-Islām yaqūd al-ḥayāt, al-Madrasa al-Islāmiyya, Risālatunā* (4th ed.). Qom: Markaz al-Abḥāth wa-l-Dirāsāt al-Takhaṣṣuṣiyya li-l-Shahīd al-Ṣadr (Dār al-Ṣadr). [In Arabic]
- Tabatabai, S. M. H. (1996). *Tafsīr al-Mīzān*. Qom: Society of Seminary Teachers of Qom, Vol. 4. [In Arabic]
- Tabatabai, S. M. H. (2008). *Barrasī-hā-yi Islāmī* [Islamic Explorations]. Qom: Bustān-i Kitāb, Vol. 1. [In Persian]
- Zamani, M. (1995). The Role of Time and Place in Ijtihad from Martyr Sadr's Perspective. *Naqd va Nazar*, (5). [In Persian]