

The Center for Muslim Contribution to Civilization

THE
Ordinances
OF
Government

Al-Aḥkāṁ al-Sultāniyya w'al-Wilāyāt al-Dīniyya

Al-Mawardi

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I

ON THE APPOINTMENT OF THE SOVEREIGN (*IMĀM*)

The *Imāmate*, or supreme leadership, is intended as vicarate of the prophecy in upholding the faith and managing the affairs of the world. Its establishment is unanimously considered to be obligatory on the Community, al-Aṣamm being the sole dissenter. There is disagreement, however, as to whether the obligation is derived on rational grounds or imposed by heavenly law. Those who subscribe to the former view argue that rational beings tend by nature to submit to a leader who would keep them from inequity and settle their conflicts and disputes. Without rulers, men would exist in a state of utter chaos and unmitigated savagery; to quote the pre-Islamic poet al-Afwah al-Awdī (in the *basīṭ* metre):

Men cannot survive in chaos without a leader;
No ruler will there be if the ignorant take command.

Those who base the obligation on the revealed law rather than reason maintain that some of the legal functions performed by the sovereign might conceivably not have been required by the faith. Rather than making them necessary, reason mandates that each rational being refrain from injustice and hostility, and adhere to fair dealing and cordial relations with others, in all things following the dictates of his own mind, not being led by other people. According to the revealed law, however, he must submit the conduct of his affairs to the leader sanctioned by the faith. As God Almighty, exalted be His name, says: "O ye who believe! Obey Allāh, the Messenger and those of you who are in authority" (Qur'ān 4:59). He has thus made it obligatory for us to obey those in authority; namely, the sovereigns with power over us. Hishām ibn 'Urwa quotes Abū Ṣāliḥ, on the authority of Abū Hurayra, as saying that the Messenger of God, God bless him and grant him salvation, said, "You will be ruled after me by some who are benign, and some who are depraved. Listen to them and obey them in all that is right. The good they do will be for your benefit and theirs; the bad they do will be for you and against them."

Section

Having been proved necessary, the office of the sovereign constitutes a collective duty, like going to war or pursuit of learning, from which the mass of the people are exempted once it is undertaken by someone with the proper qualifications. If none has assumed it, two categories of people are singled out for responsibility: the electors who must select a leader for the nation, and potential leaders one of whom must be invested. None other than these two sections of the Community deserve blame for delay in the choice of a sovereign. But, since they are thus marked out from the rest of the population for the duty of power, the conditions appropriate to each of the two need to be considered.

As to the electors, the qualifications pertinent to them are three in number: one, probity in every sense of the word; two, knowledge leading to recognition of the person fitted by his qualifications for the post of supreme leader; three, prudence and wisdom likely to make them choose the best candidate and the most capable and knowledgeable in managing state affairs. Although residents of the sovereign's capital city have no special precedence over those from other places, it has become their lot by force of custom, not law, to undertake the appointment to the post, being the first to learn of the sovereign's death, and because qualified successors are most likely to be there.

Section

There are seven conditions of eligibility for supreme leadership: first, justice or probity with all its attributes; second, knowledge conducive to the exercise of independent judgement in crises or decision-making; third, sound hearing, vision and speech so that perception could serve as a correct basis for action; fourth, physical fitness and freedom from handicaps to movement or agility of action; fifth, prudence that ensures wise handling of the subjects and able maintenance of their interests; sixth, dauntless courage in defence of the homeland and repulsion of its enemies; and seventh, notable Qurayshite descent, a matter indisputably settled by explicit text and by general consensus. ʿDirār's dissent in making all men eligible to this office regardless of descent is invalid, for when the Medinan Supporters (*Anṣār*) gave their vote of allegiance to Sa'd ibn ʿUbadah, Abū Bakr the Upright, may God grant him His favour, challenged their eligibility for the highest office on the Day of Saqīfa, citing the Prophet's own words, may God bless him and grant him salvation, "*Imāms* (leaders) come from Quraysh." Accepting his statement and granting its authenticity, they gave up all claims whether of an exclusive right to the Caliphate or of the right to share it in accordance with their former proposal of: "One ruler from us and one

from you," and accepted his assertion: "We are the rulers, you the ministers." Furthermore, the Prophet, may God bless him and grant him salvation, has said, "Follow Quraysh and go not in advance of it."

In the presence of such an undisputed text, there can be no room for doubt or for contradiction.

Section

Supreme leadership is established in two ways: selection by the electors, or appointment by a predecessor. There is considerable disagreement among scholars on the number of electors necessary for the valid investment of the sovereign. Some have argued that he would be invested by no fewer than the "generality" of the electors throughout the land in order for his election to be unanimously approved and his authority universally accepted. This view is refuted by the vote of allegiance to Abū Bakr, may God grant him His favour, given by those who were present, without waiting for the arrival of those who were absent. Another group has maintained that the minimum number of electors for a binding election is five, who may unanimously agree on a candidate or concur in the choice made by one of them. They predicate their argument on two things. One is that the investment of Abū Bakr, may God approve of him, was sealed by the consensus of five men whose lead was followed by the rest of the population: ʿUmar ibn al-Khaṭṭāb, Abū ʿUbayda ibn al-Jarrāh, Usayd ibn Ḥudayr, Bishr ibn Saʿd, and Salīm, the client of Abū Ḥudhayfa, may God approve of them. The second is that ʿUmar, may God grant him His favour, set the number necessary for consultation at six, one of whom may be invested by agreement of the remaining five. This is the view upheld by most jurists and theologians of Baṣra. Scholars from Kūfa have argued, on the other hand, that only three persons are needed, one of them taking office with the agreement of the other two, thus constituting one ruler and two witnesses, as in the case of a marriage contract, which is validated by one guardian and two witnesses. Still others have asserted that the election of the sovereign would be binding if undertaken by a single person, for al-ʿAbbās has said to ʿAlī, may God approve of him, "Give me your hand so that I may pledge you my allegiance and let the people say, 'The uncle of the Messenger, may God bless him and grant him salvation, has nominated his cousin.' No two persons would then disagree on you." They also consider the election a kind of judgement, and judgement made by a single individual is enforceable.

Section

When the electors meet to make a nomination, they must review the qualified candidates for leadership, choosing for allegiance the best and most excellently qualified, the one people will immediately obey and are not likely to forsake. Finding among the groups a person whom they are led by their deliberation to choose, they should offer him the office. If he accepts it, they should pledge him support, and his assumption of office takes effect from the moment their allegiance is declared. Henceforth, the rest of the nation owes him their loyalty and must follow his command. If, however, he declines, he should not be forced to take their offer, because what is involved is a contract based on willingness and choice rather than force or coercion, and the other eligible candidates are approached instead. Should two of them equally satisfy the requirements for the office, the older one is given precedence in the choice, even though age does not count as an additional condition once the qualification of majority is met. The younger of the two may, however, also be pledged allegiance to. If either is distinguished by greater courage and the other by more learning, the quality most needed at the time becomes the determining factor. Thus, if the virtue of courage is more in demand owing to the multiplicity of border towns or the emergence of insurgents, the braver one has a higher claim to their votes, while the more learned candidate is better entitled to their choice if the virtue of learning is needed on account of popular lethargy and the proliferation of heretics. Should two candidates fight over the appointment once it has been made, some authorities would deny them both the office on the grounds of a serious flaw in their character. The majority of scholars and jurists, however, do not consider such a dispute as a disqualifying shortcoming, for seeking the *Imāmate* is not a reprehensible action, and it has regularly been contested by the intelligentsia without any seeker being turned away or any bidder being excluded.

There is still disagreement among jurists on the means of settling a contest between two equally qualified candidates. Some have suggested drawing lots for a winner, while others have left the decision in the hands of the electors, objecting to the idea of casting lots. Should the latter make a choice of the best available candidate and give him their allegiance and a better one turns up later, their pledge clinches the matter in favour of the former and may not be retracted even for the sake of a better one. If, on the other hand, they manifest from the start a preference for a person with inferior qualifications despite the existence of a better candidate, the reason for this must be considered. For one thing, the better candidate may be away or sick, or, for another, the less qualified may be more likely to enjoy the people's obedience and love. The authorities are disagreed, however, whether the election of the lesser one is proper or his investment is valid if he is given a pledge of allegiance with no such pressing

reason. Some of them, including al-Jāhiz, are inclined to the view that the investment in that case would be invalid because, as in the exercise of discernment in legal judgements in general, the better alternative should never be given up for a less suitable one. Most of the jurists and theologians are of the view, however, that the investment stands and the election is valid. The presence of the more excellent does not preclude the choice of the less excellent if not lacking in the prerequisites for the office, just as the less excellent may be offered a judgeship despite the presence of the more excellent, for superior merit is an extra advantage, but not a basic condition for eligibility. If only one person is in possession of the qualifications for the office of sovereign at any given time to a degree which is unequalled by any other, it should be given him and no one else. Scholars have different opinions regarding the validity of the succession and the establishment of the stewardship without formal appointment or screening. Some Iraqi jurists tend to accept such assumption of power as legitimate, rendering the succession valid and making it obligatory on the Community to obey the ruler, even though no proper choice by the electors has taken place. They contend that the goal of the selection process, which is to recognise the worthy candidate, has in this case been realised owing to the excellence of the person concerned. The majority of jurists and theologians are of the view, however, that establishment in office could only take place as a result of free choice, but that the electors have to invest him. Once they agree to do so, they complete the due process, because the office of the sovereign is an appointment that is conferred by someone empowered to do that. Similarly, a person who is the sole eligible candidate for a judgeship does not become a judge unless formally appointed. Some adherents of the former view maintain that such a person becomes a judge if unique in his attributes, just as the only one with a claim to supreme leadership automatically becomes a sovereign. Others have argued that a sole candidate may not become a judge although he may become a sovereign. The difference, according to them, lies in the fact that the judgeship is a special delegation which may be withheld from a candidate though he still retains the qualifications for it, for his appointment takes effect only through a delegator. The office of sovereign, on the other hand, is a general right that partakes of the rights of God Almighty and those of men, and may not, therefore, be taken away from a qualified incumbent as no formal appointment is needed to confer it upon one who is clearly distinguished for it.

Section

The investment of two sovereigns in two different cities is invalid in both cases, for the Community may not have two rulers simultaneously, even though there

are some dissenting voices who would make that permissible. Jurists are disagreed regarding which one of the two should be sovereign. One party take him to be the one elected in the city where the previous leader died, because its residents are more entitled to make the choice, the rest of the Community in other districts delegating the task to them and investing the one they elect, so that no disunity is caused by differences of opinion and multiplicity of private interests. Others have suggested that each one of the two must give up the office in favour of his opponent, thus allowing the electors to opt for one or the other, in order to secure peace and ward off civil strife. Still another group have argued that lots must be drawn to prevent discord and end the dispute, the stronger claim to leadership being determined by the winner. Now, the truth of the matter is that the greater claim really belongs to the one who receives the vote of allegiance before the other, as in the case of a woman married off by her guardians to two men, for the marriage is effective only with the first of the two to conclude. Thus once the earlier appointee has been determined, the office is his, and the runner-up must concede him the leadership and vow allegiance to him. If the two, however, are invested simultaneously, their investment is invalid and the process is resumed either to choose one of them or a different candidate altogether. If the pledge of allegiance was given to one of the two first and it is not known to whom, the issue is settled by evidence of priority in time. Thus, if the two adversaries claim each to have been invested earlier than the other, the claim is not considered and neither is sworn in support of it because the matter does not concern them alone but all Muslims. Neither the taking of the oath nor declining to take it is relevant to the question; indeed, were one to give up the fight and hand the office over to his opponent, the latter's right to it is still only established on the basis of evidence of his earlier investment. Even the admission by one that the other has preceded him merely excludes the testifier from office, albeit without confirming the other's right to it, for the testimony given applies to a right that pertains to the Muslim Community in its entirety. A concession of temporal precedence rendered by the adversary, on the other hand, is admitted provided it is corroborated by the testimony of an independent witness and he asserts that he had not been sure of the facts at the time when the quarrel started, but it is rejected if he does not mention his uncertainty, on account of the contradiction between the two statements.

Section

If the uncertainty persists following investigation and neither contestant can establish his temporal advantage, casting lots may not be resorted to for two reasons. First, the office of supreme leader is a contract, and chance has no place

in contracts. Second, sovereignty may not be shared, and luck has no part in matters that are not amenable to sharing, such as marriage, for example, although it may apply to things capable of sharing like money. That is why the continued uncertainty nullifies both investments, and the electors must start the process of selecting one of the two all over again. Should they wish to exclude them altogether and look for someone new, they may do so according to one approach on the ground that the two are no longer eligible. In opposition to this view, however, it has been said that the electors may not choose a third person since the earlier investment of the two claimants has disqualified all others for the race, and lack of certainty does not preclude the right of one of them to the office.

Section

Investment by the nomination of a predecessor is permissible and correct by general consensus on the basis of two precedents adopted by Muslims and never put in dispute. The first is the appointment by Abū Bakr of ʿUmar, may God grant them His favour, which was accepted by Muslims as sufficient to establish his leadership. The second is that ʿUmar, may God approve of him, nominated for succession the counsellors, being the select few, whose candidacy was accepted by the Community in the conviction that the nomination was valid, so that the rest of the Prophet's Companions were not included in the list. When rebuked by al-ʿAbbās for being one of the counsellors, ʿAlī told him, may God approve of both of them, "It was a great event in Islam, from which I did not want myself excluded." Thus has nomination come to be unanimously accepted as a valid means of sovereign investment. Should an incumbent, therefore, wish to nominate a successor, he must do his best to find the one most qualified for it. Having found such a person as a result of the exercise of this discernment, he must first ascertain whether he is a son or a father of his; if not, he may appoint him to the office without participation from anyone else, and even without consulting the electors. There has been some disagreement, however, whether the approval of the latter is a necessary condition of investment. Certain Baṣran scholars have argued that endorsement of the nomination by the electors is needed to make it binding upon the Community as the investment belongs to it by right, and could, therefore, obligate it only if approved by its electors. The fact of the matter is that the appointment by the incumbent takes effect, and that additional approval is irrelevant, for ʿUmar's nomination, may God approve of him, was not dependent on approval by the Companions. Furthermore, as the sovereign has greater claim to making it, his choice is more effective and his decision more worthy of enforcement. If, on the other hand, the designated successor is a son or father of the incumbent, there have been three approaches to

the permissibility of the latter's having sole power of nomination. According to one view, he may not nominate a son or father until he consults the electors and they judge his nominee suitable for the office. His nomination in that case amounts to supporting recommendation or testimony. His appointment of him is more like a judgement, and he should neither render testimony on behalf of a son or father, nor judge in favour of either, as that would smack of favouritism owing to the natural liking he would feel for him. The second approach accords him the right to decide independently whether to nominate a son or father, because he is the sovereign, whose word is command for the nation to obey whether believed to be in its interest or against it. Thus position is given priority over family relationship, precluding any doubts regarding his integrity or cause for opposing him, since he could just as well nominate someone unrelated to himself. Now the question whether or not endorsement by the electors is a necessary factor in making the nomination binding upon the Community once its validity has been established, will be answered in accordance with the two views mentioned above. The third approach grants that he has the authority to appoint his father but not his son, as one is by nature more partial to one's son than to one's father, and is therefore inclined to amass wealth mostly for the benefit of the child rather than the parent. As to the appointment of a brother or other family relation, like that of total strangers, he may undertake it alone.

Section

Once the sovereign has nominated a successor who is properly qualified according to the conditions requisite for the office, the nominee's acceptance is all that is needed for the appointment to take effect. There is disagreement as to the appropriate time for rendering this acceptance. Some have suggested that it be given after the incumbent's death, at the time when the nominee is ready to assume power. Others contend, more correctly, that it should take place between the nomination and the nominator's death, as this early acceptance would ensure smooth transfer of leadership to the chosen successor. The incumbent may not then deprive his nominee of succession without disqualifying change in the latter, although it is his prerogative to dismiss his other delegated deputies. For those are delegated by him in matters pertaining to his right, while his appointment of a successor pertains to the rights of Muslims; that is why he may not disinherit him, just as the electors may not oust the one they have given their allegiance to unless he undergoes some disqualifying transformation. By the same token, should the sovereign nominate a different successor after disinheriting the first, the second appointment is void, and the former remains valid. Even if the first one resigns, the appointment of the second is not valid before the

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his first successor issues a decree contradicting it. In other words, the enforcement of his first choice is inevitable, while the second and third may be suspended, for the first may not be reversed. On the other hand, the electors may not choose a candidate other than the second on the original list of nominees if the first dies without designating a successor. Again, no one would succeed the second after his death in office but the third on that list, although he is entitled to designate someone else. The appointment of successors constitutes an explicit declaration in the absence of which alone choice may be exercised. If the incumbent Caliph, however, says, "I have appointed X as my successor, to be followed upon his death after coming into office by Y," the succession of the second is invalid and his appointment is not binding, because it is made conditional upon the investment of the first who may conceivably die before assumption of office, in which case the terms of the appointment are not fulfilled. In any case, the first has the right, furthermore, to nominate after succession to the Caliphate a different successor, and if he dies without doing so, the electors may choose a new candidate.

Section

Once a Caliph is invested either by appointment or by election, it is necessary for the whole Community to learn of this fact, although only the electors whose word is accepted and by whom the office is conferred need know him in person or by name. Sulaymān ibn Jarīr, however, contends that it is necessary for all the people to know the sovereign in person and by name, just as it is necessary for them to know God and His Messenger. Nevertheless, the preponderant view is that general rather than detailed knowledge of the sovereign is necessary for the mass of the population. One does not have to recognise him personally or by name except in times of catastrophe when his immediate help is needed; in the same way, judges who pass sentences, and jurisconsults who dispense expert opinion in matters of right and wrong must be known in a general rather than specific manner to the public at large, except when they are especially needed in times of trouble. Were it necessary for every member of society to know the sovereign in person or by name, all would have to undertake the trip to see him, not excluding residents of remote districts, with the consequent evacuation of towns, breach of custom, and much damage.

Once the Caliph is acknowledged in the manner outlined above, the whole nation must entrust public business to him without violence or opposition so that he can carry out his duties in protecting their interests and managing their affairs. He is known as "Caliph" (Vicar) because he is a vicar of the Messenger, God bless him and grant him salvation, in ruling his nation, and may be

addressed as "Vicar of God's Messenger," or simply as "Caliph" [i.e. Vicar]. There has been a difference of opinion whether he may be addressed as "God's Vicar," some allowing it on the ground that he oversees what is owed God by His creation, in accordance with His words, glorified and exalted is His name: "He it is Who has placed you viceroys of the earth, and has exalted some of you in rank above others" (Qur'ān 6:165). The majority of scholars, however, object to this view regarding it as sinful to hold it. Only someone who is absent or mortal, they argue, may be represented by another, but God is neither. When Abū Bakr the Upright heard himself addressed as "God's Caliph," he responded, "I am not God's Caliph, but the Caliph of God's Messenger, may God bless him and grant him salvation."

Ten public duties are required of him. First, he must guard the faith, upholding its established sources and the consensus of the nation's ancestors, arguing with emerging heretics or suspicious dissenters, demonstrating the truth to them, and administering to them the legal penalties, so that the faith should remain pristine and the nation free from error. Second, he must enforce law between disputing parties and end disagreement among antagonists until justice prevails and there are no more oppressors or oppressed people. Third, he must protect the country and the household, so that all may go about the business of living and travel anywhere unworried by deception or loss of life or property. Fourth, he must dispense the legal punishments so that God's prohibitions are observed and His worshippers' rights may be protected from vandalism or misappropriation. Fifth, he must strengthen border posts by deterrent equipment and fighting force so that the enemies may not gain the chance to violate what is sanctified or shed a Muslim's or protected non-Muslim's blood. Sixth, he must fight those who resist the supremacy of Islam after being invited to embrace it, until they convert or sign a treaty of subjection, so that God's claim to have the faith superior to any other is established. Seventh, he must collect the legal taxes and alms imposed by jurisprudence, on the basis of explicit text and the exercise of judgement, intrepidly but without tyranny. Eighth, he has to estimate the payments and allocations that must be made by the treasury without extravagance or niggardliness, and pay them neither before nor after the appointed time. Ninth, he must appoint men who are reliable and sincere and of good counsel to perform the functions or take care of the funds he charges them with in order to ensure efficiency and honest management. Tenth, he has personally to oversee matters and study the conditions of the people in order to manage public policy and guard the faith instead of relying on delegation of authority while he is preoccupied with pleasure or worship, for those deemed honest do sometimes betray the trust, and counsellors may deceive. As God, exalted be His name, says: "O David! We have made you viceroy in the earth; so, judge among men rightly, and do not follow desire lest it beguile you away from the path of God" (Qur'ān 38:26). Here, the Almighty,

praise Him, has neither delegated without overseeing nor excused submission to desire, which He has condemned as going astray. Even though this behaviour is imposed upon the Caliph by requirements of the faith and by his office, it is indeed necessary policy for each person in his respective domain of authority. "You are all shepherds and all responsible for your herds," said the Prophet, God bless and grant him salvation. The following poetic depiction of a statesman (in the *basīṭ* metre) is, therefore, quite apt:

Let your affairs be run by a man
Competent and artful in war,
Unpretentious in good times, unsubdued in adversity,
Who has learned the vicissitudes of time, leading and led,
Takes hardships in his stride, and is free of pomp and servility.

In a similar vein, al-Maʿmūn was told by his minister Muḥammad ibn Yazdād (also in the *basīṭ* metre):

A man in charge never sleeps when other men do,
How could he when he must always decide to do or undo!

Section

By doing what is due to the Community in the manner outlined, the sovereign accomplishes also what is due to God in relation to their rights and duties, and they owe him in return two things so long as his policy has not changed: obedience and support. Two changes of policy disqualify him for leadership: lack of justice and physical disability. Lack of justice or probity is classified into submission to desire and suspicious acts. The former has to do with sinfulness, committing forbidden deeds and venturing on violations of decency in pursuit of pleasure. This kind excludes from candidacy in the first place, and disqualifies from continuation in office. An incumbent so disqualified must step down, and may not be reinstated upon regaining probity without a new appointment. Certain theologians contend, however, that reinstatement is possible after reform of character without resuming the election or obtaining a new vote of allegiance owing to the universal nature of his jurisdiction and the inconvenience of going through the election process all over again. The second has to do with suspected unorthodoxy, which would preempt investiture and continuation in office in the opinion of some scholars, on the ground that mere suspicion is sufficient as in the case of utter disbelief. Many Baṣran authorities, on the other hand, maintain that it does not disqualify from leadership as it does not disqualify from judgeships or rendering of testimony.

Physical disability is divided into three kinds: missing senses, missing organs, and mental deficiency. Missing senses fall, again, into three classes, one that disqualifies for office, one that does not, and one regarding which there is disagreement. The first is either loss of reason or loss of sight. Loss of mind may be temporary and likely to go away like fainting; because it is subject to little confusion and of little duration, it neither bars from the supreme office nor strips an incumbent from it, for the Messenger himself, God bless him and grant him salvation, fainted in his illness. If chronic and with little chance of recovery, such as madness or idiocy, it may be permanent with no interludes of sanity, in which case it disqualifies from taking office or keeping it, but if there are intermissions of sanity, the case must be investigated. If the intervals of insanity are on the whole longer than those of recovery, they disqualify just like permanent insanity and dispossess an incumbent, but if the opposite is true it disqualifies from appointment, although there is disagreement whether it also disqualifies from continuing in office. Some have said that it prevents continuation as it prevents from assumption of office. Leadership is invalidated by it because its permanence detracts from the required authority of the position. The suggestion has been made, however, that it debars from election for office, but not from continuing to hold it, as perfect fitness is required in conferring the appointment, and utter unfitness for giving it up.

As to blindness, it precludes both initial appointment and continuation in office. Since its occurrence is incompatible with holding a judgeship as well as for the rendering of testimony, it should be all the more so with regard to the *Imāmate*. Night-blindness, on the other hand, neither precludes appointment nor necessitates resignation from office, because it is an infirmity that may be hoped to disappear in better times. Poor vision that does not keep one from identifying others does not exclude one from appointment, although if it is so poor as to render such identification impossible it does, and makes stepping down obligatory on the incumbent.

The second category of senses of which the loss does not affect the office of the sovereign includes the olfactory sense resident in the nose, whereby smells are perceived, and the sense of taste whereby different flavours are distinguished. Neither is relevant to the *Imāmate* since they both relate to pleasure but have no effect on good judgement or work.

The third kind of sense loss, regarding which there exists some disagreement, covers loss of hearing and loss of speech. Both exclude from candidacy to the supreme office in the first place because they are inimical to the perfect fitness required. There are different views, however, concerning the need to give up the office by an incumbent on their account. Some authorities maintain that he has to, as he does if he loses his eyesight, due to the detrimental effect such loss has on work and the management of affairs. Others argue that he does not have to

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leave on their account, as they may be replaced by gesture, while resignation is necessitated only by total loss. Still another group of authorities suggest that writing makes up for this loss, but not gesture, since writing is intelligible and gesture is only imagined to be. The first approach is the more correct. Stammering and poor hearing despite perception of sound, however, do not constitute sufficient causes for stepping down, although initial appointment while suffering from either is subject to disagreement. Some have suggested that it would be a disqualifying defect, while according to another viewpoint it would not be. Considering that God's prophet Moses, peace be upon him, was not disqualified for prophecy by his speech impediment, the restriction should apply even less to the office of head of state.

Section

Loss of organs falls into four categories, the first of which does not affect the validity of appointment or continued tenure in office, because it does not impair judgement or work, hinder movement, or disfigure appearance. Removal of the penis or testicles, for example, like impotence, affects reproduction rather than judgement or statesmanship, and so does not disqualify from office. Referring to John, son of Zechariah, God – glorified be His name – says of him, while praising him: “a chief, *ḥaṣūr*, and a prophet who was one of the righteous” (Qurʾān 3:39).

Ḥaṣūr has been interpreted by Ibn Masʿūd and Ibn ʿAbbās as unable to have sexual intercourse with women, and by Saʿīd ibn al-Musayyab as lacking a penis altogether or having one too diminutive for intercourse. As this does not disqualify from prophecy, it should exclude even less from government. Similarly, lopped off ears affect neither judgement nor work, and the disfigurement due to it is easily hidden from view.

The second category precludes appointment to the office of Caliph and continued tenure in it. It includes working disability due to the loss of the hands, for example, or inability to move, due to the amputation of the legs, which invalidates any claim to the *Imāmate* as it renders impossible fulfilment of the Community's rights that depend on action or movement.

The third category precludes appointment to the office, but there is disagreement on its effect on continued tenure. It includes partial disablement from work or movement due to the loss of one arm or leg, which excludes from candidacy for appointment because it constitutes a basic deficiency, although there is division of opinion among jurists concerning the legitimacy of continuation in office after it occurs. According to one approach, one ceases to be *Imām* on account of it since it is a disability that bars from investment and also from continuation in