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# CONSTITUTION OF THE ISLAMIC REPUBLIC

**CONSTITUTION OF THE ISLAMIC REPUBLIC.** The supplement (*motammem*) to the Constitution (*Qānūn-e asāsī*, lit. "fundamental law") adopted in 1325/1907 had represented a compromise, in which some features of European constitutional law that were obviously inconsistent with traditional Shiʿite religious law were modified (see constutional revolution of 1323-29/1905-11 iii). There was, however, no attempt at that time to create an Islamic constitution or a system of public law rigorously based on Shiʿite law.

The Islamic Revolution and the Drafting of the Constitution

*The concept of welāyat-e faqīh.* After the overthrow of the Pahlavi monarchy in 1358 Š./1979 Persia was declared an Islamic republic. Until that time there had been virtually no discussion, outside religious circles, of the conception of *welāyat-e faqīh* (lit. "mandate of the jurist") propounded by Ayatollah Ruhollah Khomeini (Rūḥ-Allāh Ḵomeynī; pp. 26-51). During the revolutionary turmoil of 1357 Š./1978-79 only the vaguer notion of "Islamic government" was current. It was only when the Majles-e ḵobragān (Assembly of experts; see below) began deliberations on a proposed constitution for the Islamic Republic in the summer of 1358 Š./1979 that *welāyat-e faqīh* began to emerge as the basis for the new document.

By no means all members of the assembly were agreed upon the

interpretation of this term or even fully understood its implications, which included a radical transformation of the traditional Shiʿite theory and practice of authority. The traditional notion of *nīābat-e ʿāmma* (general vicegerency of the Hidden Imam) yielded to that of *welāyat-e faqīh*, which was equated with *welāyat-e amr* (mandate to rule), a term implying derivation from *ūlū'l-amr* in verse 4:59 of the Qurʾān. In a reversal of the consensus of Shiʿite commentators on this verse, it has been maintained ever since that it refers to jurists in general and to the supreme jurist in particular. On the basis of this revolutionary reinterpretation of *welāyat-e faqīh* as the continuation of the imamate, the supreme jurist is identified with the koranic *walīy-e amr* in the Constitution of the Islamic Republic of Iran (Amir Arjomand, 1988a, pp. 192-95).

*Struggles over the draft constitution*. Khomeini himself does not appear at first to have attached much significance to drawing up a constitution. When, on 22 Dey 1357 Š./12 January 1979, he declared the formation of the Šūrā-ye enqelāb-e eslāmī (Council of the Islamic revolution), he specified as one of its tasks "the formation of a constituent assembly composed of the elected representatives of the people, in order to approve the new constitution of the Islamic Republic" (Algar, p. 8), but this item in the declaration originated with Prime Minister Mahdī Bāzargān and other liberals and Islamic modernists in the revolutionary coalition. The Bāzargān cabinet and the Šūrā, following the declaration, prepared a draft constitution during the spring of 1358 Š./1979. It was in many respects similar to that of 1325/1907, especially in its definition of the role of clerical authorities; in place of the committee of five *mojtaheds* (ranking theologians) specified in the supplement of 1325/1907, the Šūrā-ye negahbān (Council of guardians), consisting of five *mojtaheds* elected by the Majles from a list supplied by the *marājeʿ-e taqlīd* (supreme religious authority) and six nonclerical legal experts, was envisioned (Kātūzīān, p. 168). Khomeini was reportedly prepared, in June 1979, to accept this draft constitution with only minor changes. In fact, he proposed to bypass the promised constituent assembly and to submit the draft directly to a referendum. The modernists Bāzargān and President Abu'l Ḥasan Banī Ṣadr insisted, however, on prior approval of the draft by an elected assembly, and it was decided to hold elections for such an assembly on 12 Mordād/ 3 August.

Meanwhile, the draft constitution had instantly become the subject of debate among secular parties, journals, and organizations. Particularly influential were the commentaries of Nāṣer Kātūzīān, professor of law at Tehran

University, who based some of his strictures on a preliminary draft that had been published in May; many of his ideas were accepted by the provisional government and the draft modified accordingly (Kātūzīān, p. 132). These debates alarmed Khomeini, however. He therefore insisted that clerics should have the sole responsibility for revising the draft from an Islamic perspective (Bakhash, 1984, p. 78). Foremost among those who participated were the ayatollahs Ḥosayn-ʿAlī Montaẓerī and Moḥammad Beheštī, who seem to have been influenced by the constitutional ideas of the Iraqi thinker Ayatollah Moḥammad-Bāqer Ṣadr. In his "jurisprudential commentary" on the draft constitution Ṣadr noted that, as the function of the imams had been fulfilled during the occultation (*ḡayba*) by holy men particularly esteemed as sources of emulation (*marjaʿīya*, lit. "source [of emulation]"), it would be proper for a single *marjaʿ* to assume the positions of head of state and commander of the armed forces in an Islamic regime; it would also be proper for him to nominate, or at any rate approve, a candidate for the presidency, to be popularly elected as head of the executive branch. Ṣadr suggested the institutionalization of an "assembly of the people of loosening and binding" (*majles ahl al-ḥall wa'l-ʿaqd*), the members of which were to be drawn from among the *ʿolamāʾ* and Islamic thinkers proposed for popular election by the ruling *marjaʿ* (Ṣadr, pp. 11-13). Beheštī appears to have adopted this last idea in the form of an assembly of experts, in preference to the promised constituent assembly, and to have persuaded Khomeini to accept it. Montaẓerī also wrote a commentary on the draft constitution, examining the idea of *welāyat-e faqīh* and opposing the separation of powers, on the grounds that all branches of government must be subordinate to the "just jurist" (*mojtahed-e ʿādel*; Montaẓerī, passim; Īzadī, pp. 272-78). He was prevailed upon by Khomeini to run for election to the Assembly of experts and became its first president. Beheštī, as vice-president, played a particularly important role in promoting the principle of *welāyat-e faqīh* as the basis for the new constitution.

The stage was thus set for the defeat of the proponents of national sovereignty and the unveiling of Khomeini's theocratic program. In an important statement at the fortieth session of the Assembly of experts on 17 Mehr 1358 Š./9 October 1979 Montaẓerī defined the major objective of the constitution: elimination of the traditional duality between political and religious authority, between "customary government" (*ḥokūmat-e ʿorfī*) and "hierocratic government" (*ḥokūmat-e šaṛʿī*) in Persia. He also distinguished between two kinds of prescriptions, those derived from the Quṛʾān and the traditions, on one hand, and "governmental prescriptions" (*aḥkām-e ḥokūmatī*), on the other

(Madanī, II, pp. 177-78). The latter are based on general social requirements and the necessity for maintaining order and include, for example, traffic regulations. He argued that obedience to religious prescriptions is incumbent upon everyone, whereas governmental enactments not endorsed by the *mojtaheds* need not be obeyed. “If we want to follow the Islamic law, we must say that the enactments of the Majles are not legal and enforceable without the approval of the jurists of the Council of guardians” (Madanī, II, pp. 177-78 n. 23).

The establishment of the supervening hierocratic authority and the veto power of the Council of guardians paved the way for the designation of the supreme jurist as leader of the Islamic Republic. With Beheštī in the chair, the militant clerics of the Assembly adopted the principle of *welāyat-e faqīh*. Ḥojjat-al-Eslām Rabbānī Amlašī, for instance, argued that it was time to “rescue” the institution of *marjaʿīyat-e taqlīd* by transforming it into *welāyat-e faqīh*, pointing out that, had plans for doing so been devised earlier, the Islamic Revolution might have triumphed fifteen or sixteen years earlier (*Eṭṭelāʿāt*, 20 Šahrīvar 1363 Š./11 September 1984). The Assembly then proceeded to institutionalize theocracy (see below). On this point it refused to compromise with the norms of national sovereignty and, on 16 Ābān 1358 Š./7 November 1979, rejected an article proposing that “the leader and the members of the leadership council of the Islamic Republic of Iran must be Persian citizens and [resident] in Persia” (Madanī, II, p. 177 n. 14). The Assembly concluded its deliberations in mid-November, and its draft constitution was ratified in the referendum of 11-12 Āḏar 1358 Š./2-3 December 1979.

The Constitution of 1358 Š./1979

*Similarities with earlier constitutional documents*. The Assembly of experts had altered the draft submitted by the Bāzargān government beyond recognition. The new document was not a republican constitution made consistent with Shiʿite Islam but a constitution purporting to be fundamentally Islamic and to incorporate specifically Shiʿite principles of government. To underscore this point, the Constitution included an appendix in which koranic verses and traditions were cited in support of many of the articles. Nevertheless, reflecting the original draft prepared by the provisional government, the structure of the Constitution of 1358 Š./1979 resembles that of the supplement of 1325/1907, though the order differs and the titles have been modified. For example, a chapter on “leadership” replaces the one on monarchy, and two

unprecedented chapters on foreign policy and mass media were included. In addition, quite a few provisions of the previous constitution were retained in substance, including those for equality before the law (Arts. 19-20); guarantees of security of life, property, honor, and domicile (Arts. 22, 39); freedom of opinion and choice of profession (Arts. 23, 28); the rights to due process (Arts. 32-36) and to privacy of communications (Art. 25); and the requirement for public deliberations of the Majles under normal circumstances (Art. 69), as well as parliamentary procedure and definition of the rights and responsibilities of the ministers vis-à-vis the Majles (Arts. 70, 74, 88-90). The power of the Majles to dismiss ministers with a vote of no confidence was reinforced by including in the Constitution provision for the established practice of requiring a vote of confidence whenever the cabinet is introduced to the Majles (Art. 87). Provisions designed to ensure parliamentary control of taxation and government finance were also retained (Arts. 51-55), as were those requiring approval by the Majles for international agreements (Art. 77), state loans (Art. 80), and transfer of state property (Art. 83). Concern with economic independence is more emphatically expressed (Art. 43.8) than in the earlier constitution, and the formation of companies by foreigners is strictly forbidden (Art. 81 ). These similarities are, however, outweighed by fundamental differences between the two constitutions. Differences owing to the international climate. One large category of differences reflects changes in the international political culture during the eight decades intervening between the two constitutions, foremost among them the very idea of a republic with a president, elected by popular vote for four years and eligible to run for a second term (Art. 114), to serve as chief executive, though subordinate to the leader (Art. 113). With the approval of the Majles the president could appoint a prime minister (Art. 124), but the prime minister could be dismissed only by the Majles through a vote of no confidence (Art. 135). Furthermore, as spokesmen for a movement claiming to be in the vanguard of a global Islamic revolution, members of the Assembly of 1358 Š./1979 were exposed to international currents and, in order to mobilize mass support, readily adopted the rhetoric of competing Western-inspired “progressive” and revolutionary movements. Women were thus mentioned in the preamble, and in Articles 20 and 3.14 the equality of men and women before the law is explicitly declared; Article 21 is devoted exclusively to the rights of women. These rights are, however, defined largely in the context of the family and motherhood. The bill of civil rights includes an explicit declaration that all individuals are presumed innocent unless proven guilty (Art. 37), and in Article 38 torture is prohibited. Finally, underscoring the

social distinction between the Islamic regime and Western "individualism," Article 10 declares the family "the basic unit of Islamic society." The wording seems to be an exact translation of Article 35 of the Turkish constitution of 1961, with the word "Islamic" substituted for "Turkish" (Amir Arjomand, 1992, pp. 23, 33).

Prevailing ideas of the welfare state and the state as the agency responsible for economic and social development, combined with the pervasive influence of state socialism, account for the extensive enumeration of the socioeconomic duties of the state in Article 3, inclusion of four articles (28-31) on the social rights of citizens, and considerable attention to economic issues (Arts. 43-46, 48-49). In addition to articles on government finances, retained from the earlier constitution, Article 43 stresses the need for economic independence and agricultural and industrial self-sufficiency, requiring "the prevention of foreign economic domination." Article 48 requires balance and economic equality among the regions of the country. The duties and social responsibilities of the state enumerated in Article 3 include welfare, education, securing of political and social freedom, nationwide physical education (3.3) and military training (3.11), encouragement of cooperation and popular participation (3.8), and economic self-sufficiency (3.13). Provision of these services must be in accordance with the official ideology of the Islamic Republic: "[T]o create prosperity, remove poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and general insurance," the state must plan "a correct and just economic system in accordance with Islamic criteria" (Art. 3.12; cf. Algar, p. 28). The state is also charged with "expanding and strengthening Islamic brotherhood and nationwide public cooperation" (3.15). Citizens are guaranteed employment (Arts. 28-29); social security, health and retirement benefits (Art. 29), free primary and secondary education (Art. 30), and housing (Art. 31). The Islamic character of the Republic is reflected in the prohibition of usury (*rebā*), monopoly (*enḥeṣār*), and hoarding (*eḥtekār*; Arts. 43.5, 49); in the definition of public land and resources (Art. 45); and in the ban on acquisition of wealth in contravention of Islamic law (Art. 49). The influence of socialism is discernible in Article 46, which qualifies the security of private property by providing that property must not deprive others of opportunities. Nevertheless, the Islamic economy is conceived as a cooperative one in which both concentration of wealth in the hands of a few (as under capitalism) and transformation of the state into a single gigantic employer (as under socialism) are avoided (Art. 43.2). Article 44 accordingly declares: "[T]he economic system of the Islamic

Republic of Iran is to consist of three sectors: state, cooperative, and private, and is to be based on orderly and correct planning" (Algar, p. 44). Finally, ecological concerns are also expressed, and Article 50 declares protection of the environment a public duty.

The influence of post-World War II national-liberation movements is also clearly discernible in the Islamic constitution. Statements on the goals of the Islamic movement (see below) and on foreign policy are couched in anti-imperialist terms. Article 3.5 includes, as one of the basic duties of the state, "the complete expulsion of imperialism and the prevention of foreign influences." To avoid dependence on foreign powers, the establishment of foreign military bases in Persia is forbidden (Art. 146), as are contracts that can lead to foreign domination over the natural, economic, cultural, military, and other resources of the country (Art. 153). According to Article 152, "The foreign policy of the Islamic Republic of Iran is based upon the rejection of all forms of domination." Furthermore, "while scrupulously refraining from all forms of aggressive intervention in the internal affairs of other nations, [the Islamic Republic] protects the just struggle of the disinherited (*mostażʿafīn*) against the mighty (*mostakberīn*) in every corner of the globe" (Art. 154). It is indicative of the pan-Islamic orientation of the Assembly that, in contrast to the supplement of 1325/1907, Article 12, though declaring Twelver Shiʿite Islam the state religion, also explicitly recognizes the four schools of law of Sunnite Islam and Zaydī Shiʿism. Article 13 recognizes Persian Zoroastrians, Jews, and Christians as "the only religious minorities," thus excluding Bahais. Persian is the official language of the country, though the use of other dialects is permitted in schools and in the press (Art. 15); in Article 16 the teaching of Arabic, the language of the Qurʾān and the Islamic sciences, in secondary schools is made compulsory (as it had been during the Pahlavi period).

Finally, a number of differences between the old and new constitutions can be accounted for by the political experience of the Pahlavi period. Article 79 forbids the imposition of martial law, and Article 17 specifies that the starting point of the official calendar is the *hejra* (migration) of the Prophet; the purpose of the latter provision must have been to prevent any repetition of Moḥammad-Reżā Shah's unpopular shift from the Islamic calendar to an imperial one in 1353 Š./1974, a move that was reversed during the revolutionary crisis in 1357 Š./1978. Article 59 establishes the referendum as a direct means for ascertaining the will of the people.

*The Islamic character of the Constitution.* All the mentioned differences appear

somewhat marginal compared to the fundamental difference that sets the Constitution of 1358 Š./1979 apart not only from its predecessor but also from all other modern constitutions. This difference is abundantly clear in the preamble, which reveals the ideological, distinctly and thoroughly Islamic character of the document. It begins with the expression "In the name of God" (see besmellāh), followed by a historical sketch of the Islamic revolutionary movement: "The fundamentally distinct characteristic of this revolution, in comparison to other Persian movements during the past century, is its ideological (*maktabī*) and Islamic nature." Khomeini is referred to as "the imam" throughout and is presented as the undisputed leader, who had fueled the Islamic revolutionary movement with his continuous proclamations and messages from exile and who had presented "the plan for Islamic government on the basis of *welāyat-e faqīh* at the height of repression. . . . " The publication, on 17 Dey 1356 Š./7 January 1978, of the letter from Khomeini that sparked the revolution is mentioned and also the referendum of 10-11 Farvardīn 1358 Š./30-31 March 1979, in which 98.2 percent voted to establish the Islamic Republic.

The Constitution is then described, with references to verses from the Qurʾān, as an attempt by the nation, which in the course of revolution has cleansed itself of godless government and foreign ideas and returned to the "authentic intellectual positions and world view of Islam," to ensure continuation of the revolution at home and abroad, in order to create a united and universal community of believers (*ommat-e wāḥed-e jahānī*). The document is intended to realize the creedal basis of the revolution and to lay the groundwork for active participation by all members of society in the process of making political or other vital decisions, in effect the government of the disinherited upon the earth, according to verse 28:5 of the Qurʾān. This background seems to explain the necessity for "an ideological (*maktabī*) army" (cf. Art. 144), the sense of the terms *maktab* and *maktabī* representing a political innovation, and also for a systematic resort to the media of mass communication (cf. Article 175). The distinctively Islamic nature of the movement requires an Islamic government in the form of "*welāyat-e faqīh* on the basis of *welāyat-e amr* (mandate to rule) and the uninterrupted (*mostamerr*) imamate." It also requires "the creation of a judiciary system based on Islamic justice" and implies that "the economy is a means, not an end," in contrast to materialist doctrines in which the economy is taken as an end in itself.

The preamble thus defines the Constitution as both an ideological and a

theocratic document. Ideologically the Constitution imposes rather severe restrictions on the civil rights of the individual. The vague qualification, in Article 21 of the supplement of 1325/1907, of the freedom of association by the requirement that associations and gatherings "do not give rise to religious and worldly disturbance" (*fetna-ye dīnī wa donyawī*) has been replaced by the much stricter requirement that parties and associations not "violate Islamic standards and the bases of the Islamic Republic," which has been interpreted as outlawing secular political parties and associations. Furthermore, the previously unqualified right to participate in unarmed gatherings and demonstrations is virtually nullified by the qualification that they "not be detrimental to the fundamental principles of Islam" (Art. 27).

More extraordinary and far-reaching than the general ideological character of the Constitution is its specific theocratic nature. In the first chapter theocracy is justified by the declaration that sovereignty and legislation are the exclusive possession of the One God (Art. 2.1 ) and by definition of the Islamic order as based on belief in the five principal articles of faith (*oṣūl-e dīn*) in Shiʿite Islam, one of which, the imamate, is extended to underpin the political authority of religious jurists (Art. 2.1-5). A sixth article declares the high value of man and his freedom, combined with responsibility to God, to be realized under the guidance of the jurists, by adoption of science and technology, and through elimination of tyranny and domination (2.6). This article amounts to a firm rejection of the separation of religion and the political order. The underlying principles of the previous constitution—national sovereignty, separation of powers, and the legislative power of the Majles—have thus been systematically reassessed and reformulated from a particular Islamic theocratic perspective.

Neither national sovereignty nor parliamentary representation is mentioned as a defining feature of the Islamic Republic. Article 3, however, emphasizes "ensuring the participation of the entire people in the determination of their political, economic, social, and cultural destiny." In Article 7 the principle of consultation (*šūrā*), derived from koranic verses 42:38 and 3:159, is said to be embodied in the Majles and in local, municipal, and provincial councils (*šūrāhā*). This principle is, however, subordinate to that of leadership, and one commentator has noted that many proponents of consultation during the constitutional debates were not firm believers in Islam and were oriented toward "syncretic thought," seeking to accommodate Islam to non-Islamic perspectives by linking consultation to national sovereignty in opposition to

*welāyat-e faqīh* (Madanī, II, pp. 151-52). Articles 100-06 are devoted to the provincial councils, which are fundamentally different from the *anjomans* defined in the preceding constitution. They are to be elected at village, district, town, and provincial levels to provide for popular participation in "the rapid progress of social, economic, developmental, health, cultural, and educational programs and other welfare matters through popular cooperation" (Art. 100). The idea of local councils had been vigorously promoted by leftist groups during the revolution, and, perhaps as a precaution against leftist domination of such groups, Article 105 nullifies any counsel decision "contrary to Islamic standards and the laws of the country."

Although Chapter 5 is devoted to the right of national sovereignty (*ḥāqq-e ḥākemīyat-e mellat*), there is no direct statement on national sovereignty corresponding to that in Article 26 of the supplement of 1325/1907. Instead, national sovereignty is defined obliquely, in a manner devoid of clear legal implications. In Article 56 there is a declaration that "Absolute sovereignty belongs to God, and it is He who has made man the governor of his social destiny." The idea of the separation of powers is retained, at least in principle, even though the legislative, executive, and judicial branches are all subject to "the supervision of the [person invested with] the mandate to rule (*welāyat-e amr*) and the imamate of the community of believers" (Art. 57). "The legislative power is to be exercised through the Majles-e šūrā-ye mellī (National consultative assembly), consisting of the elected representatives of the people" (Art. 58); the executive power through the president and the cabinet, "except for matters directly assigned to the leadership" (Art. 60); and the judicial power through "courts of justice, which are to be formed in accordance with Islamic standards" (Art. 61 ).

Unquestionably the most important previous constitutional institution retained in the Constitution of 1358 Š./1979 is the Majles. It consists of 270 representatives, each elected for four years (Arts. 62-64). The legislative power of the body is, however, subject to important restrictions. Article 4 stipulates that all laws and regulations must, without exception, be based on Islamic standards, and the determination of this matter is left to the jurists (*foqahāʾ*) of the Council of guardians. Article 71 assigns to the Majles the power "to legislate within the limits of its competence laid down in the Constitution," and Article 72 specifies that "The Majles cannot enact laws contrary to the principles and ordinances of the state religion or the Constitution," again leaving the determination of this matter to the Council of guardians. Article 93

further declares the Majles devoid of legal validity in the absence of the Council of guardians; in drawing up this clause the Assembly must have been mindful that Article 2 of the supplement of 1325/1907, providing for religious review of all legislation, had become a dead letter. The Council of guardians is thus defined as a legislative body (Kātūzīān, pp. 259-61; Madanī, II, p. 133), an appointed upper house with veto power over all legislation by the Majles; it consists of six *faqīh*s and six secular lawyers (Art. 91 ), each appointed for six years, with terms of half of the members expiring every three years (Art. 92). The *faqīh*s are appointed by the leader, the others by the Majles from a list provided by the Šūrā-ye ʿalī-e qażāʾī (Supreme judiciary council; Art. 91). The Council of guardians is required to examine the constitutionality and conformity to Islamic standards of all enactments by the Majles, as a rule within ten days (Art. 94); the determination of constitutionality is made by the entire council, that of conformity to Islamic standards only by the *faqīh*s (Art. 96). The Council of guardians is not exclusively a legislative organ, however. It is also a high court empowered to interpret the Constitution (requiring a three-fourths majority of all members; Art. 98) and exercises the important executive functions of supervising all referenda and presidential and parliamentary elections (Art. 99), as well as determining the qualifications of presidential candidates before the elections (Art. 110.4).

The organization of judicial power laid down in Chapter 11 (Arts. 156-74) is central to the character of the Islamic regime. Article 157 establishes the Šūrā-ye ʿalī-e qażāʾī as the highest judicial organ, responsible for organizing the entire judicial branch, including the supreme court (Dīvān-e ʿalī-e kešvar); recruiting, assigning, promoting, and dismissing judges; and preparing legislation on judicial matters. Its members include the chief justice of the supreme court, the prosecutor general (*dādestān-e koll-e kešvar*), and three other judges, all of whom must be *mojtahed*s and elected by a majority of all the judges in the country (Arts. 158, 162). Article 161 provides for the establishment of a supreme court, responsible for ensuring correct implementation of the law and uniform judicial process. Its chief is to be a *mojtahed*, selected for a five-year term by the leadership in consultation with the judges of the court (Art. 162). According to Article 167, judges must settle all disputes according to the law, or, if none applies, on the basis of “valid Islamic sources or a valid injunction (*fatwā*).” The function of the minister of justice is mainly coordination with executive and legislative authorities (Art. 160). Article 171 makes each judge personally liable for damages in instances of the willful miscarriage of justice. The traditional duality of the judiciary

system in Persia, which had been recognized in the earlier constitution, has thus been replaced by a single theocratic system exclusively under clerical control.

The Constitution grants equal status to the regular army and the corps of guardians of the Islamic revolution (*sepāh-e pāsdārān-e enqelāb-e eslāmī*), which was formed in the early days of the revolution (Art. 150).

The centerpiece of the new Constitution, however, is *welāyat-e faqīh*, which is enunciated in the preamble and embodied in Articles 5, 107, and 110. In keeping with the principle of *welāyat-e amr* and the uninterrupted (*mostamerr*) imamate, the preamble provides for leadership by a *faqīh* possessing the necessary qualifications and recognized as leader in accordance with the tradition "The conduct of affairs is to be in the hands of those who are learned concerning God and trustworthy guardians of that which He has permitted and that which He has forbidden." The adjective *mostamerr* and the association with *welāyat-e amr* constitute an extension of the traditional connotations of "imamate" in a novel direction. The imamate is equated with "uninterrupted leadership (*rahbarī-e mostamerr*) and its fundamental role in the continuation of the revolution of Islam" in Article 2.5 and juxtaposed with "continuous jurisprudence (*ejtehād*) of the *faqīh*s" in Article 2.6a. This association paves the way for the transfer of the imamate from the twelve infallible holy imams to the *faqīh* as the leader (*rahbar*) of the Islamic Republic in Article 5: "During the occultation (*ḡaybat*) of the Lord of the Age . . . the mandate to rule (*welāyat-e amr*) and the imamate devolve upon the just and pious *faqīh*, who is acquainted with the circumstances of his age; courageous, resourceful, and possessed of administrative ability; and recognized and accepted as leader by the majority of the people. In the event that no *faqīh* should be recognized by the majority of the people, the leader or leadership council, composed of the *faqīh*s possessing the aforementioned qualifications, will assume these responsibilities in accordance with Article 107" (cf. Algar, pp. 29-30).

In Article 107 *marjaʿīyat* is named as a necessary qualification for the position of leadership or for membership in the leadership council, which is to consist of three or five *faqīh*s. Selection of the leader and the leadership council is to be by popularly elected "experts" (*ḵobragān*); their number, qualifications, selection, and regulations for their deliberations in the first term were to be legislated by the Council of guardians and approved by the leader (Art. 108). Any subsequent changes or review of this law was to be the prerogative of the

Assembly of experts itself. This body is, furthermore, responsible for dismissing the leader should he become incapacitated or otherwise ineligible to serve (Art. 111 ). The extensive powers of the leader include supreme command of the armed forces and guardians of the revolution, confirmation of the president and his dismissal following either a verdict of the supreme court or a vote of "political incompetence" (*ʿadam-e kefāyat-e sīāsī*) in the Majles, appointment of the highest judicial authority and the *faqīh*s of the Council of guardians, and the declaration of war and peace.

The Majles has no jurisdiction over the election and membership of the Assembly of experts. These matters were further regulated by laws passed by the Council of guardians in October 1980 and October 1982 and by amendments in August and November 1982. The minimum age for voters, originally set at sixteen years, was later reduced to fifteen years, and the total number of members was eventually set at eighty-three. The most important qualification for candidates was *ejtehād*, established by either explicit or tacit approval of the leader, by reputation in learned circles, or by achievement of the highest level of religious learning (*dars-e ḵārej*) as certified by three reputable professors (amendment of 12 Mordād 1361 Š./3 August 1982; Madanī, II, pp. 87-92). The Assembly of experts was elected in December 1982 and was inaugurated on 23 Tīr 1362 Š./14 July 1983. Four days later it passed its internal constitution, in accordance with Article 108 (Madanī, II, pp. 92-97, 171-76). In preparation for the elections to the second session in October 1990 the Council of guardians took responsibility for determining the *ejtehād* of the candidates.

The electoral law for the Majles was passed on 10 Esfand 1362 Š./29 February 1984; it established direct popular elections in two stages, each by secret ballot, under the supervision of the Council of guardians. In the first stage candidates are elected by majority vote; in the second a plurality is sufficient. Ministers, upper- level civil servants, mayors, judges, and leaders of congregational prayer are not eligible. In addition, anyone who had "helped" the previous regime, owners of undeveloped land, members of outlawed political parties and associations, and those convicted of apostasy or acts against the Islamic Republic are also barred from candidacy. Investigating the past records of the candidates is the task of the intelligence unit of the revolutionary guards, revolutionary committees, and other judiciary bodies.

The constitutional crisis of 1367 Š./1988 and the amendments of 1368 Š./1989

The first act of the new Majles on 31 Tīr 1359 Š./22 July 1980 was to change its name officially from National consultative assembly to Islamic consultative assembly (Majles-e šūrā-ye eslāmī), but there was no corresponding amendment to the Constitution. From the very beginning the Majles and President Banī Ṣadr, who had been elected in January, were locked in a political struggle that surfaced in a prolonged disagreement over the choice of prime minister and then of the cabinet. The Majles, exercising its power to approve ministers, forced the choice of Moḥammad-ʿAlī Rajāʾī, the candidate of the Islamic republican party, and Banī Ṣadr sought to block his functioning at every turn. In this struggle the president was at a constitutional disadvantage, for he did not have power to dissolve the Majles. In fact, there had been no provision for dissolution of the Majles, not even by the leader. Nor could the president dismiss the prime minister. The one constitutional prerogative that Banī Ṣadr could and did use was to withhold his signature from laws passed by the Majles (Art. 123). In June 1981, therefore, the Majles exceeded its constitutional authority and passed a law requiring the president to sign legislation within five days (two days for urgent matters) or permit it to become law without his signature. More important, on 27 Tīr 1360 Š./17 June 1981, it went beyond the provision in Article 110.5 for dismissal of the president on grounds of "political incompetence" and provided that a president could be dismissed on a motion signed by one-third of the deputies and approved by a majority of two-thirds (Madanī, II, pp. 192-93). Banī Ṣadr was then dismissed by this procedure on 1 Tīr 1361 Š./22 June 1982.

After his dismissal the arena for constitutional conflict shifted. The Council of guardians, adhering to traditional Shiʿite principles of jurisprudence and exercising its power to determine the consistency of legislation with Islamic standards, vetoed several bills for redistribution of land, nationalization of foreign trade, labor (particularly measures related to collective bargaining and a minimum wage), and other economic measures that presumably would infringe the rights of private property and the Islamic law of contract governing wages. As early as October 1981 and again in January 1983 the speaker of the Majles, ʿAlī-Akbar Hāšemī Rafsanjānī, sought Khomeini's explicit intervention to override the Council's veto. Hāšemī Rafsanjānī's position rested on a radically broadened interpretation of the jurisprudential principles of public expediency or interest (*maṣlaḥat*) and overriding necessity (*żarūrat*). In the first instance Khomeini refused to intervene, and in the second his intervention fell short of explicit exercise of the legislative authority of the *walī-e faqīh* (Bakhash, 1987, pp. 104-05, 108; Ashraf, pp.

300-04).

Nevertheless, he finally overcame his reluctance, and, on 16 Dey 1366 Š./6 January 1988, he reprimanded President ʿAlī Ḵāmenaʾī for claiming that the authority of Islamic government could be exercised only within the framework of the ordinances (*aḥkām*) of Islamic law. He declared that government in accordance with God's absolute mandate (*welāyat-e moṭlaqa-ye faqīh*) is "the most important of the divine commandments and has priority over all derivative divine commandments. . . . [It is] one of the primary commandments of Islam and has priority over all derivative commandments, even over prayer, fasting and pilgrimage to Mecca." Khomeini proceeded to institutionalize *welāyat-e faqīh*. On 17 Bahman 1366 Š./6 February 1988 he appointed Majmaʿ-e taškīṣ-e maṣlaḥat-e neẓām (Commission for determination of the interest of the Islamic order), including the six clerical jurists of the Council of guardians and a number of other religious authorities, to deliberate on bills approved by the Majles and rejected by the Council of guardians; decisions were made by simple majority vote of those present (*Jomhūrī-e eslāmī*, 18 Bahman 1366 Š./7 February 1988). The commission met a week later, adopted rules for procedure, and elected Ḵāmenaʾī chairman (Nahżat, pp. 4-24).

The constitutional implications of Khomeini's statements on the absolute *welāyat-e faqīh* remained unclear, especially in relation to what would happen after his death. Meanwhile, friction between Ḵāmenaʾī and the clerical radicals in government, led by Prime Minister Mīr-Ḥosayn Mūsawī, over strategies for reconstruction greatly intensified after the cease-fire with Iraq in July 1988. This conflict led to open expressions of dissatisfaction with the constitutional division of executive power between the president and the prime minister. Furthermore, the resignation of Khomeini's designated successor, Montaẓerī, on 7 Farvardīn 1368 Š./27 March 1989, added urgency to the need for constitutional resolution of the problem of the succession. On 29 Farvardīn 1367 Š./18 April 1988 170 Majles deputies and the supreme judiciary council separately urged Khomeini to order a revision of the Constitution. Within a week he had agreed and had assigned the task to a committee, subsequently Šūrā-ye bāznegarī-e qānūn-e asāsī (Council for the revision of the Constitution), of eighteen clerics and two laymen, to which the Majles was invited to elect five of its members. They were given two months to revise the existing constitutional provisions on leadership, centralization of authority in the executive, centralization of authority in the judiciary, centralization of

management of the radio and television networks, the number of deputies in the Majles and its official designation as the National Islamic assembly, the role of the new Discretionary council, and subsequent constitutional amendments (*Jomhūrī-e eslāmī*, 30 Farvardīn 1367 Š./ 19 April 1988). The committee met on 6 Ordībehešt/26 April and elected Ayatollah ʿAlī Meškīnī, president of the Assembly of experts, as its president. The only recorded subsequent instructions from Khomeini came in a letter of 19 Ordībehešt/9 May advising that the requirement of *marjaʿīyat* for the position of leadership be dropped and expressing his opinion that recognition as a *mojtahed-e ʿādel* by the Assembly of experts should suffice (*Jomhūrī-e eslāmī*, 20 Ordībehešt 1367 Š./10 May 1988).

When Khomeini died, on 13 Ḵordād 1368 Š./3 June 1989, the Council had already met eighteen times, and the clerical authorities were able to act decisively and without delay. The Assembly of experts met the following morning and after a long session elected Ḵāmenaʾī as Khomeini's successor by a majority of sixty votes out of seventy-four. He received all Khomeini's former titles, except "imam," and was hailed as *walī-e amr-e moslemīn*. Within three weeks Ḵāmenaʾī had asserted his supreme authority as the new leader of the Islamic Republic by confirming one of the last decrees issued by Khomeini (*Kayhān-e hawāʾī*, 7 Tīr 1368 Š./28 June 1989, p. 1); he subsequently confirmed a number of Khomeini's representatives in various governmental and revolutionary organizations and appointed some of his own. The Council for revision of the Constitution continued its work at full speed, holding its thirty-eighth and last session on 17 Tīr 1368 Š./8 July 1989. The revised Constitution was approved by a majority of more than 97 percent in a referendum held simultaneously with the presidential elections on 6 Mordād 1368 Š./28 July 1989.

The Council had carried out Khomeini's instructions in full. The name of the Majles had been changed to "Islamic consultative assembly" throughout the Constitution. To provide for further constitutional amendments as they became necessary, a permanent *šūrā-ye bāznegarī* was established; it was to consist of the members of the Council of guardians and the Commission for determination, the heads of the three branches of government, five members of the Assembly of experts, ten members appointed by the leader, three delegates from the executive branch, three from the judicial branch, ten from the Majles, and three from the universities. Proposed amendments would be put to a popular referendum after approval by the leader. The *šūrā* would not,

however, have the power to alter "the Islamic character of the regime, basing of all laws and regulation upon Islamic standards and pillars of faith, the objectives of the Islamic Republic of Iran, the republican form of government, *welāyat-e amr*, and the imamate." This oblique reference to *welāyat-e faqīh* falls short of explicit endorsement, and the issues involved remain to be clarified. The revolutionary interpretation of *welāyat-e faqīh* is, however, established as an unalterable foundation of the Islamic Republic. In a new article the Discretionary council was incorporated as an organ of the state, its functions being to advise on any matter referred to it by the leader and to arbitrate between the Majles and the Council of guardians. Furthermore, according to amended Article 110, the leader is to consult the Commission in setting general policies for the Islamic republican order and to refer to it those difficulties that cannot be resolved through ordinary procedures.

The supreme judicial council was replaced by a single chief justice, to be appointed by the leader for five years (new Art. 157); the leader was also given the power to appoint and dismiss the director of the broadcasting networks and a media supervisory commission drawn from the three branches of government. The post of prime minister was abolished and all his functions transferred to the president (new Arts. 60, 69, 87, 125-27). Other new provisions (not given article numbers in the referendum) granted the president power to choose deputies (*moʿāwenān*), the first of whom would have vice-presidential status, and to serve as chairman of a new national security council. The president is responsible to the Majles, which can now question him at the request of at least one-third of its members; dismissal requires a vote of no confidence by at least two thirds of the members (new Art. 89; cf. Art. 134).

The primary task, and the most difficult, was, of course, constitutional implementation of *welāyat-e faqīh*, the settlement of the leadership issue. In accordance with Khomeini's instructions the requirement of *marjaʿīyat* was eliminated in amended Article 109, but, in addition, after his death some other important amendments were adopted. At its first session in 1362 Š./1983 the Assembly of experts had appointed a committee to lay down procedures for dismissal; previous requirements had focused on personal incapacity of the leader without addressing the possibility of "loss of qualifications" (Madani, II, pp. 98-118). Under amended Article 111 the Assembly of experts is empowered to dismiss the leader also "if it should become apparent that he had lacked some of the qualifications from the beginning." This new formulation appears

to grant the Assembly of experts unrestricted control over the leader, as the qualifications specified in Article 109 include, beside jurisprudential competence, "correct political and social perspective, administrative and managerial competence, courage, and adequate power for leadership." Finally, the provision for a leadership council to fulfill the functions of the *faqīh* was eliminated in amended Articles 5 and 107, with the slight qualification, in Article 111, that a leadership council can function in emergencies, pending the speedy election of a new leader by the Assembly of experts. The powers of leadership were thus concentrated in a single person, as were the executive and judiciary powers. The legislative power, on the other hand, was subject to further diffusion, even though in principle it emanated from the leader. It could be exercised by all citizens through participation in the Majles, by the six clerical jurists appointed by the leader to the Council of guardians, or by the Discretionary council.

These amendments did not amount to institutionalization, or even explicit endorsement, of absolute *welāyat-e faqīh*. The incorporation of this principle in the establishment of the Islamic Republic in 1358 Š./1979 had been directly detrimental to the traditional pluralism of *marjaʿīyat-e taqlīd*. The latest stage in constitutional implementation of the principle has entailed a radical step back from *marjaʿīyat* to *ejtehād* and formal training as the foundation of hierocratic authority. This step became definitive in the amended Constitution of 1368 Š./1989. It might also be argued that the elimination of *marjaʿīyat* from the requirements for the *walīy-e faqīh* has resulted in a new dualism of political and religious authority, representing a compromise between traditional and innovative principles, between *marjaʿīyat-e taqlīd* and *welāyat-e faqīh* in Shiʿite Persia.

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