

THE CONCEPT OF SOVEREIGNTY AND THE POSITION OF THE 'ULAMA IN BOTH CONSTITUTIONS OF IRAN (1906 and 1979)

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Abstract

Iran is one of the few countries in the world to have had two major popular twentieth-century revolutions that succeeded in changing the form of government -the revolution of 1905-11 and that of 1978-9. While there is no doubt that the Islamic revolution in 1978-9 provided a thoroughgoing overthrow of the old political, social, and ideological order, the constitutional revolution of 1905-11 initiated the process of the erection of the power of the 'ulamâ, changing their status from that of the main leaders of society as representative of the people to that of their new level of being only one of the leaders in society. The Constitutional Revolution also changed the conceptions of authority and sovereignty alongside the changes in the power of the 'ulamâ. On the other hand, the Islamic Revolution is unique in the annals of modern history in that it brought to power not a new social group equipped with political parties and secular ideologies, but a traditional clergy with mosque pulpits and claiming the divine right to supervise all temporal authorities, even the country's highest elected representatives, thus not taking into consideration the sovereignty of the people.

Key Words: Iranian Constitutional Revolution, Iranian Islamic Revolution, Shi'ite ulama, authority, sovereignty, equality, constitution, Shi'a.

Hâkimiyet Kavramı ve Şiî Ulemânın İran Meşrûtiyet (1905-11) ve İslâm (1978-79) Anayasalarındaki Rolü

Özet

İran yirminci yüzyılda iki büyük devrim yaşamıştır. Birincisi 1905-11 Meşrûtiyet hareketi, ikincisi ise 1978-79 İslâm devrimi. İslâm devrimi, eski siyasî, sosyal ve ideolojik düzenin tamamıyla değişmesini temin ederken, Meşrûtiyet hareketi toplumun yegâne liderleri olan Şiî ulemayı halkın temsilcilerinden birisi konumuna indirgeyerek, onların geleneksel gücünü zedelemiştir. Meşrûtiyet hareketi, ulemanın gücündeki değişikliğin yanı sıra, geleneksel hâkimiyet ve otorite anlayışlarında da önemli açılımlara zemin hazırlamıştır. Diğer taraftan İslâm devrimi, siyaset sahnesine yeni siyasî partiler ve seküler ideolojilerle mücehhez bir sınıftan değil, halkın temsil gücünü hiçe sayıp görünüşte onların irâdesinin temsil edildiği meclise hükmeden ulema sınıfını iktidara taşımıştır. Bu makalede ulemanın her iki devrimdeki rolü ve ulemanın gücünde meydana gelen değişiklikler mukayeseli olarak ele alınmıştır.

Anahtar Kelimeler: İran Meşrûtiyet hareketi, İran İslâm devrimi, Şiî ulema, otorite, hâkimiyet, eşitlik, anayasa, Şîa.

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Introduction

Iran is one of the few countries in the world to have had two major popular twentieth-century revolutions that succeeded in changing the form of government -the revolution of 1905-11 and that of 1978-9. While there is no doubt that the Islamic revolution in 1978-9 provided a thoroughgoing overthrow of the old political, social, and ideological order, the constitutional revolution of 1905-11 initiated the process of the erection of the power of the 'ulamâ, changing their status from that of the main leaders of society as representative of the people to that of their new level of being only one of the leaders in society. Their power was further curtailed by the following modernization and centralization programmes initiated under Rizâ Shah. The Constitutional Revolution also changed the conceptions of authority and sovereignty alongside the changes in the power of the 'ulamâ. It saw the triumph of the modern intelligentsia who, inspired by such Western ideologies as liberalism and socialism, introduced a predominantly secular constitution, which was more or less copied from the Belgian constitution, and hoped to recreate their society in the image of contemporary Europe. On the other hand, the Islamic Revolution is unique in the annals of modern history in that it brought to power not a new social group equipped with political parties and secular ideologies, but a traditional clergy with mosque pulpits and claiming the divine right to supervise all temporal authorities, even the country's highest elected representatives, thus not taking into consideration the sovereignty of the people.

1. The Nature of Authority in Shi'ism

Sunni Islam developed its constitutional theory in the presence of a Sunni state. Obedience to the ruler became a religious obligation even if the ruler were unjust, for that was preferable to anarchy. Thus religion became one of the main supports of the state. The development of Shi'ism, on the other hand, took place for much of the time with the Shi'ites as a minority group in a Sunni state. Thus the Shi'ites, during their early period, had no need of someone like Mawardî, who in Sunnism integrated the political sphere into the religious one¹. If we take the right or legitimate claim to obedience as the essential component of the notion of authority, the search for its roots in Islam takes us to verse 4:59 of the Qur'ân: "O believers, obey God, and obey the messenger and those in authority among you..." The phrase translated as "those in authority" is *ûlî al-amr*. It means entitled to command (*amr*). The referent of the term is nowhere defined in the Qur'ân itself. Sunni Islam considered the caliphs the heirs to the Prophet and imams (leaders), making them, together with their appointees, beneficiaries of this verse and thus entitled to obedience. But for Shi'ites this refers to the imams. All political authority for Shi'ism is theoretically vested in the Imam².

It can no longer be doubted that Sunni and Shi'ite Muslims shared the idea of the legitimate Caliph as "the Imam of guidance" (to salvation) in the first two centuries. Nevertheless, the Shi'ite conceptions of authority developed along a radically divergent path. The Shi'a vehemently rejected the legitimacy of the established caliphate and considered 'Ali and his descendants the rightful successors of the Prophet -and as such, en-

1) Momen, Moojan, *An Introduction to Shi'î Islam*, New Haven, Conn., 1985, p.191f.

2) Ibid, p.192.

titled to *khilâfa(t)* and the divinely inspired and infallible (*ma'sûm*) imams of the community of believers. Divine appointment (*nasb*) and divinely sanctioned designation (*nass*) by the Prophet or the preceding imam became the distinctive mark of the Shi'ite theory of imamate. Consequently, "those in authority" in verse 4:59 could be no other than the imams³. From the eighth century onward, the charismatic authority of the imams as the supreme political leaders and teachers of religion became intimately linked to their '*ilm* (science/knowledge). This distinctive feature became all the more important for later developments in the period of occultation (*ghayba*), as the portion of the authority of the imam that was most easily transferable to the Shi'ite '*ulamâ* in his absence was precisely that derived from '*ilm*. In the process of transfer, the notion of '*ilm* became detached from that of the infallibility of the imam and equated with the knowledge of the '*ulamâ*. Thus, the two most important features of the Shi'ite notion of the authority which formed the basis of the later theories of the juristic authority of the '*ulamâ*, were (1) its derivation from imamate as the immediate extension of prophecy; and (2) its partial derivation from '*ilm*⁴.

It is important to see the ideological framework in which the political tensions within the different groups of '*ulamâ* were articulated. Traditional Shi'ite theories of government had divided history into two different epochs: (1) the period before A.D.874 when the imams were present on the earth, and, in theory no governmental problems existed since the judgment of the imams was presumed infallible and unquestioned by true believers; and (2) the period following the "occultation" (disappearance into hiding) of the Twelfth Imam, when questions of governmental structure and legitimacy of authority became controversial. The '*ulamâ* thought, in the absence of an infallible imam, a completely just Islamic government was impossible and believers had to seek the best possible state. In their view, the superior government was one that maximized the participation of the entire Shi'ite community⁵.

This accommodation of existing political order by religious authorities could, in theory, manifest itself in at least two distinctive manners: (1) planned withdrawal from the political sphere and indifference towards politics; and (2) active endeavor to subjugate political power and impose ethico-hierocratic regulation upon the political sphere⁶.

Although the claim that legitimate power belonged to a *mujtahid* had some support in prior Shi'ite theory, it is a phenomenon of the eighteenth century after the victory of a school of Twelver thought -the *Usûlîs* or *mujtahidîs*⁷- over the other main school -the *Akhbârîs*⁸ or followers of traditions. It is true that the position of the '*ulamâ* in Shi'ism

3) Idem, *The Shadow of God and the Hidden Imam*, Chicago, 1984, p.192f.

4) Idem, "Shi'ism, Authority, and Political Culture", p.3.

5) Tabari, A., "The Role of the Shi'i Clergy in Iranian Politics", in *Religion and Politics in Iran*, ed. Keddie, N.R., New Haven, Conn., 1983, p.57.

6) Arjomand, S.A., *The Turban for the Crown*, Oxford, 1988, p.75.

7) For more information about Usûlîs, see Uyar, Mazlum, *Şii Ulemânın Otoritesinin Temelleri*, İstanbul, 2004, p.13-179.

8) For more information about Akhbârîs, see idem, *İmâmiyye Şîası'nda Düşünce Ekolleri-Ahbârîlik*, İstanbul, 2000.

is to a large extent a function of their right to *ijtihâd*. Their eminence depends essentially on the acquisition of the rank of *ijtihâd*. The *Akhhârîs*, who dominated especially the shrines of Arab Iraq in the period between the fall of the Safavid dynasty and the establishment of Qâjâr rule rejected the *mujtahid*'s function as incompatible with the authority of the imams. Even his limited use of *ijtihâd* seemed as reprehensible as it would have been before the Greater Occultation. The division of the community into *muqallid* and *mujtahid* was rejected in favour of the earlier concept of the whole community as *muqallid* to the imams. But, on the other hand, the institution of the *mujtahid* had the practical merit of ensuring a continuous leadership of the community and of providing a source of immediate authority that was neither too great to offend the claims of *vilâyat*, nor too restricted to be without practical effect⁹.

The *Usûlî* movement flourished outside Iranian territory in the holy cities of Ottoman Iraq and consisted of a revival of Twelver Shi'ite jurisprudence that dominated the last decades of the eighteenth and the whole of the nineteenth centuries. It consisted of the vigorous reaffirmation of the principle of *ijtihâd* and thereby resulted in very considerable enhancement of the power and the independence of the Shi'ite '*ulamâ*. The revival of religious jurisprudence greatly augmented the prerogatives of the Shi'ite *mujtahids* as the authoritative interpreters of the Sacred Law. The failure of Nadir Shah's policy to promote Sunnism and restrict certain Shi'ite practices proved that Iran's conversion to Shi'ism was irreversible. While the Safavid state had given way to a hierocracy-state dualism, in the Qâjâr period a considerable division of the political and the religious functions of government was worked out, and the Shi'ite '*ulamâ* assumed independent control of the latter. This comprised the religious, the judicial, and the educational institutions. This was partly so because, while the Safavids had claimed authority on the basis of being both "shadows of God on earth" (the ancient Iranian concept of kingship, i.e. temporal authority) and "the representative of the Hidden Imam" (i.e. spiritual authority), the Qâjârs, however, only claimed the title of "shadow of God on earth" and left the claim of being "the representative of the Hidden Imam" to the '*ulamâ*¹⁰.

A very important factor in determining the capacity of a hierocracy to act against the state or upon society is the character and extent of autonomy of its organization. Although the autonomy of the Shi'ite hierocracy began to be established in the early years of the nineteenth century, the appointment of the *imam jum'ah* and *shaykh al-islâm*s of the major cities still remained with the ruler, but their position was nevertheless not that of a government official. It had to be, to some extent, based upon consent of the population. It is true that the Shi'ite hierocracy was still very loosely organized in 1900 and lacked any elaborately hierarchical structure characteristic of the Catholic Church. The principle of juristic authority in Shi'ism, that is *ijtihâd* only made possible the division of the clerical professionals into the *mujtahid* and *non-mujtahid*¹¹.

To sum up, with the establishment of the Qâjâr state, there took place an evolution in Shi'i *fiqh* which asserted the role of the *mujtahid* in directing the community and even

9) Algar, Hamid, *Religion and State in Iran 1785-1906: The Role of the Ulama in the Qajar Period*, Berkeley, 1969, p.6-8.

10) Momen, *An Introduction*, p.137.

11) Arjomand, *The Turban for the Crown*, p.13-16.

in ruling it. The establishment of Qājār rule also presented the 'ulamā with the spectacle of a state that made many of the same assumptions concerning the nature of royal power as had the Safavids but was itself deprived of the semi-legitimacy provided by alleged descent from the imams.

In the new situation, however, a political theory to accommodate the state within the system of belief was still not developed. Such a theory was probably impossible:

the 'ulamā, having established their position as *de facto* regents of the Imam, could not have allotted the monarchy a similar position. Without such a position the monarchy was bound to be regarded as illegitimate. The contradiction was seldom stated explicitly but was nonetheless the ultimate cause of most of the friction between the secular and religious powers throughout the nineteenth century. Whereas the 'ulamā could not reasonably demand of the state that it abdicate its power, they expected at least some kind of submission from it¹².

Even if the state had not been considered fundamentally illegitimate, it would in any event have been condemned to virtual powerlessness. Because the ruler, like every other believer who had not attained the rank of *ijtihād*, was obliged to be a *muqallid* to a certain *mujtahid* and to execute his rulings and pronouncements, the state was to some extent the executive branch of clerical power¹³.

The common alienation of the people and the 'ulamā from the state served to bring the nation and the 'ulamā more closely together. The 'ulamā acted not merely as communal but also increasingly as national leaders. They had a practical function to give direction to the community as intermediaries between the imam and the society.

In the absence of an effective organ for the expression of public opinion, the 'ulamā were the only group who could act as a restraint on the government and who could put openly to the shah and his advisers the dangers of a particular policy; and in general the views expressed by them were listened to with respect. This is not to say that they were well organized and united enough to organize and control the day-to-day actions of the government, but they were able sometimes to exercise restraint and to act as peacemakers, and in the last resort to provide a refuge for the people against injustice.

Government officials came into contact with the population mainly over the collection of taxes and the levy of soldiers. There was no sense of community between them and the people. The 'ulamā, on the other hand, were in constant touch with the people. It was to them, therefore, and not to government officials, that the people naturally looked for the fulfillment of their aspirations and, above all, for protection¹⁴.

Another power base of the 'ulamā was their financial position. The 'ulamā through the concept of *nā'ib al-'āmm* (general representative of the Hidden Imam) came to assert their right to the receipt of the *khums* and *zakāt* which represent a considerable income and gave the 'ulamā, to a large extent, financial independence from government. It had its historical roots especially in the Safavid period. In establishing officially favored 'ulamā, whom they saw as supporters and not as potential rivals, the Safavids stres-

12) Algar, *Religion and State*, p.22.

13) *Ibid*, p.23.

14) Lambton, A.K.S., *Qajar Persia*, London, 1987, p.280f.

sed the obligatory nature of large alms to be administered by the 'ulamâ, which the Qâjâr had to follow in order to get any co-operation from them¹⁵.

The duality of judicial system into *shar'* and *'urf* courts was also one of the important factors in the 'ulamâ's power in the Qajar period. The other factor which gave the 'ulamâ a certain independence was the existence of the Shi'ite shrines in the 'Atabât. At the time of the constitutional movement, the support of the 'ulamâ of Najaf and Karbalâ was an important source of strength to the constitutionalists.

The relations of the religious classes with the merchants and the craft guilds were mutual. This relationship made the 'ulamâ, to some extent, amenable to the wishes of the wealthy merchants. The peasants also looked to the religious classes with respect. Many of the *mullâs* who went round the countryside collecting their dues from the harvest were charlatans, but they played a part in the life of the village, and provided one of the few contacts between the villager and the outside world¹⁶. Thus, the 'ulamâ carried out many functions that in the modern states are governmental; and especially after the *Usûlî* victory over the *Akhhârîs* and because of the governmental vacuum due to the government's incompetence and the absence of a national army and effective bureaucracy, they played the leading role in the nineteenth century, culminating in the Constitutional Revolution.

2. The Origins of the Constitutional Revolution and the 'Ulamâ-Secular Alliance

The Constitutional Revolution presents the first direct encounter in modern Iran between the traditional Islamic culture and the West. All earlier attempts at modernization, although involving important changes in the legal, governmental and administrative systems, were conducted in areas tangential to the traditional values¹⁷.

The first drive for modernization was led by Prince 'Abbâs Mirzâ (d. 1833). As heir apparent and thus governor of Azerbaijan¹⁸, he discovered during the first Russo-Iranian War that the tribal cavalry was no protection against the mobile artillery. He therefore modelled himself on the contemporary reformer of the Ottoman Empire, Sultan Selim III, and constructed in Azerbaijan his own version of the Ottoman *Nizâm-i Jadîd* (New Order) equipped with mobile artillery and fairly up-to-date weapons, paid regularly by the state, dressed in uniforms, housed and drilled in barracks, and trained and disciplined according to contemporary European (especially French and Russian) rules¹⁹. To supply the new army, he established in Tabriz a cannon factory, a musket plant, and a translation office for military and engineering manuals. To safeguard it, he opened the country's first permanent missions abroad in Paris and London. To insure its future, he

15) Momen, *An Introduction*, p.207.

16) *Ibid*, p..283.

17) Enayat, Hamid, "The Debates over the Constitutional Revolution", in *Expectation of the Millennium*, eds. Seyyed Hossein Nasr, Hamid Dabashi and Seyyed Vali Riza Nasr, New York, 1989, p311.

18) The first Qâjâr ruler, Aqa Muhammad, recognized the importance of the area, made it the seat of the heir apparent, and assigned some of his most able advisers to the Azerbaijani government, thereby initiating a series of relatively forward-looking bureaucrats that included Qâ'im Maqâm and Amîr Kabîr. Helfgott, Leonard M., "The Structural Foundations of the National Minority Problem in Revolutionary Iran", *Iranian Studies*, XIII (1980), p.206.

19) Algar, *Religion*, p.75f.; Abrahamian, Ervand, *Iran between Two Revolutions*, Princeton, 1982, p.52.

dispatched Iran's first students to Europe. To finance all this, he cut court salaries, pensions, and extravagances; he also raised revenues through protective tariffs and decrees against the use of foreign cloth, which prompted Western protests. The commercial attaché from Britain complained that the dogma of protectionism was disrupting the natural laws of free trade. And to prevent a repetition of the religious revolt that had destroyed Selim II, 'Abbâs Mirzâ obtained clerical pronouncements in favor of the *Nizâm-i Jadîd*.

The austerity measures antagonized courtiers, pensioners, and tax-collectors. The new tariffs, as mentioned before, prompted Western protests. The modern army aroused the fears of the provincial magistrates. Moreover, the new army, by strengthening 'Abbas Mirzâ, aroused the hostility of his brothers; some of these princes, who had refused to reconcile themselves to his nomination as heir apparent, spread rumors that the crown prince was dangerous, heretical, and even a "secret unbeliever". Consequently, 'Abbâs Mirzâ saw the slow death of his *Nizâm-i Jadîd* long before he met his own natural death in 1833²⁰.

The second drive for modernization was initiated by Mirzâ Muhammad Taqî Khan Farâhânî, better known as Amîr Kabîr (the Great Lord) (d. 1851). He was the son of a cook in the household of 'Abbâs Mirzâ. As a member of diplomatic missions to Russia and the Ottoman Empire, Taqî, who spoke Russian fluently, was impressed by the contrast between European advancement and Iranian backwardness. After he became premier, he cemented his ties with the dynasty in traditional Iranian fashion by marrying the sister of Nâsir al-Din Shah. Realizing the danger that concessions to Great Britain and Russia posed to Iran's sovereignty, Taqî adopted a new policy, which would later become known as negative equilibrium. He avoided giving any concessions in either the south or the north²¹. He revived the standing army and established fifteen factories to supply his army and to cut foreign imports. He founded the country's first official newspaper, the *Ruznâmah-i Vaqâyi' Ittifâqiyah* (Newspaper of Current Affairs) and, most important of all, he built the country's first secular high school, the *Dâr al-Funûn* (Abode of Learning). It offered its students, who were mostly sons of the aristocracy, classes in many subjects. To finance these projects, he applied the same measures which 'Abbâs Mirzâ had done. These measures provoked an immediate reaction from both inside and outside and, as a final blow, the Bâbî revolt, which coincided with these reforms, created a general atmosphere of instability. He was dismissed in 1851, sent to Kashan, and executed there soon after. His plans for the future were cast aside and his industrial factories, despite heavy investments, were left to wither away²².

Although these reforms were intended to change the balance of power in favour of the state, all these measures taken by two reformers did not aim at undermining any specific Islamic institution and principle. By contrast, the Constitutional Revolution was a movement of unprecedented dimensions in Iran's modern history which embraced vast groups of people from every social quarter, thus generating a heated debate between diverse ideologies, old and new. The implication of many a constitutionalist idea challenged the very foundation of the religio-political order, thereby causing a deep rift among

20) Ibid, p.52.

21) Ghods, M. Reza, *Iran in the Twentieth Century*, London, 1989, p.22.

22) Abrahamian, *Iran*, p.53f.

the *elites*. Perhaps the significance of this rift can be better understood if a comparison is drawn with the constitutional history of Ottoman Turkey. When similar controversies broke out in Turkey during the famous Meşrutiet period from 1908 to 1918, that country had long passed through the travails of the Tanzimat period (a half century of reforms from 1826 onwards), and the Young Ottoman movement (formed in the mid-1860s). By that time, both sides in the debate had accumulated considerable ability and had sharpened their polemical tools, particularly over the thorny issues of legal codification and judicial reforms, and modernization of the educational system²³.

Neither side in the constitutional debate in Iran had such precedents to fall back on. Even the duality of the judicial system (between the religious and non-religious courts) had lasted so long that it had become part of the traditional structure and lost its potential for initiating ideas of change. So discussion on "uses and abuses of man-made laws inevitably provoked in its train dissensions over the virtues and vices of modernization". The novelty of the controversy and the complexity of the issues involved could hardly be helpful to mutual understanding between the two sides of the debate. But there was one precedent which gave the religious proponents of the constitution an edge over all other groups in terms of argumentative skills. This was the development of the science of *usûl-i fiqh*, the roots or theory of jurisprudence, which had achieved great subtlety among the Shi'ites, but reached new peaks in the nineteenth century. As mentioned, tension between the *Usûlîs* and their opponents, the *Akhbârîs*, had grown sharply since the middle of the eighteenth century²⁴. After a long struggle, the *Usûlîs* won over the *Akhbârîs*. The triumphant *Usûlîs* were those who claimed the key role for *mujtahids* in the interpretation of law and doctrine. All believers were supposed to pick a living *mujtahid* to follow and to abide by his judgments while the *Akhbârîs* claimed that the Traditions of the Prophet and the imams provided sufficient guidance, without the need for rulings by a *mujtahid*²⁵.

The victory of the *Usûlî* doctrine had prepared a precedent for the pro-constitutionalists.

By upholding the authority of reason and the right of *ijtihad*, the *Usûlî* doctrine could not fail to render the Shi'i mind susceptible to social changes, inspire confidence in human ability to regulate social affairs. However, there were in fact many features in the *Akhbârî* doctrines too which could have made them equally receptive to certain democratic notions, for instance their stance against the *mujtahids* had strong anti-elitist, and consequently populist implications²⁶.

After the *Usûlî* victory, the '*ulamâ* began to be seen in the political sphere as a force capable of influencing national policy. Firstly they had to establish a power base in Iran and to accommodate the ruling Qâjâr family. Their involvement in the Russo-Iranian wars was the first of a chain of episodes where the '*ulamâ* had a marked influence on the course of Iranian history. The subsequent links in this chain were to include the agitati-

23) Enayat, Hamîd, *Modern Islamic Political Thought*, London, 1982, p.166.

24) *Ibid*, p.166f.

25) Algar, "The Oppositional Role of Ulama in Twentieth Century Iran", in *Scholars, Saints and Sufis*, ed. Nikkie R. Keddie, London, 1972, p.235; for general information, see Uyar, *Imâmiyye Şîası'nda Düşünce Ekolleri*.

26) Enayat, *Modern Islamic Political Thought*, p.167-9.

on against Husayn Khan Sipahsâlâr in 1872, the opposition to the Tobacco Regie in 1891-2, their involvement in the constitutional movement, their participation in the Mu-saddiq government, and culminating in the Iranian Revolution of 1979²⁷.

Regardless of whether certain individuals or groups were better or worse off as a result of the Western impact on Iran, various groups in society had reason to be discontented with the Qâjârs and with Western incursions. Largely abortive reforms (above-mentioned) under the Crown Prince 'Abbâs Mirzâ (d. 1833) and chief ministers Amîr Kabîr (d. 1851) and Mirzâ Husayn Khan Sipahsâlâr (d. 1881) left Iran without a modernized army, bureaucracy, and educational system. The small Russian officered Cossack Brigade, founded in 1879, remained the Qâjârs' only military force.

This lack of change and discontent can be explained. Iran had much less contact with the West than did Mediterranean and Middle Eastern countries and had an arid terrain with a scattered population. As a result, the country was very difficult to centralize. The shahs had to permit a devolution of power to some groups such as the 'ulamâ, landowners, tribesmen, and others²⁸. The Qâjâr dynasty started from a small base which was not deeply anchored in history and society and it became a family business (patrimonial rule) to which a certain number of 'ulamâ were invited to participate. It is also true that the *mujtahid*-system supported the fragmentation of the socio-political structure because there was no formal hierarchy among the 'ulamâ. After the *Usûlîs* won over the *Akhbârîs*, the 'ulamâ power began to increase. *Usûlî* 'ulamâ had a stronger position than did the Sunni 'ulamâ. While not infallible, *mujtahids* were qualified to interpret the will of the infallible Twelfth Hidden Imam²⁹. There was no clear differentiation between Shi'ite Islâm as a religious belief from the conception of Shi'ite community as a would-be autonomous social order. In other words, there existed no concept of secular society. If the ruler failed to carry out his foremost duty, the 'ulamâ would consider it incumbent upon them to carry out this obligation by assuming the leadership of the nation conceived of as no other than the Shi'ite community such as in the Constitutional Revolution³⁰.

The contributions of liberal thinkers and the 'ulamâ to the constitutional movement were, at least in the early stages of the revolution, closely linked. It is nonetheless important to separate them³¹; because the recurring alliance between the bazaaris and many of the 'ulamâ on the one hand and secularized liberals and the 'ulamâ on the other has been largely based on the existence of common enemies and interests rather than on any real agreement about goals and each of their aims. The 'ulamâ wanted to extend their control and to have Shi'ite Islam more strictly enforced, liberals and radicals looked for greater democracy and development, and bazaaris wanted to restrict favoured foreign economic status and competition³².

27) Momen, *An Introduction to Shi'i Islam*, p.137-9.

28) Keddie, "Iranian Revolutions in Comparative Perspective", in *Islam, Politics, and Social Movements*, eds. Edmund Burke & Ira M. Lapidus, California, 1988, p.299f.

29) Arjomand, "The Shi'ite Hierocracy and the State in Pre-modern Iran: 1785-1890", *European Journal of Sociology*, XXII (1981), p.43.

30) *Ibid*, p.43.

31) Algar, *Religion and State*, p.185.

32) Keddie, "Iranian Revolutions in Comparative Perspective", p.30lf.

From the middle of the nineteenth century various reformers, including Akhundzâdah (d. 1873), Majd al-Mulk (d. 1880), Mustashar al-Dawla (d. 1895), Tâlibov (d. 1911), and Mirzâ Malkum Khan (d. 1908), placed heavy emphasis on the need for a proper code of laws to which government officials would be accountable. These reformers perceived that compared to Europe, Iran was poor, backward, and weak³³. Exposure to the ideas of the West, especially the ideas of the French Enlightenment, persuaded them that history was not the guidance of the Hidden Imam and his representation by the Shi'ite '*ulamâ*, nor the cyclic rise and fall of royal dynasties such as court chroniclers narrated. Western history further convinced them that Human Progress was not only desirable but also attainable, provided the three chains of royal despotism, clerical dogmatism and foreign imperialism could be broken.

The intelligentsia therefore came to see constitutionalism and nationalism and liberalism as the three vital means for attaining the establishment of a modern, strong and developed Iran³⁴. The intelligentsia found itself at times allied with the shah against the '*ulamâ*, at times with the '*ulamâ* against the shah, at other times with the shah against the imperial powers, especially Russia, and sometimes, as in the Constitutional Revolution, with the '*ulamâ* against both the shah and the imperial powers. These tactical inconsistencies, as well as the general consistencies, can be seen in the life and works of the two most important members of the nineteenth-century intellectuals: Sayyid Jamâl al-Dîn Afghânî and Mirzâ Malkum Khân³⁵.

The Constitutional Revolution can also be thought of as a continuation of the wide-ranging constitutional movements taking place in many parts of the world during the second half of the nineteenth century³⁶. The Russo-Japanese War of 1904-5 and the Russian Revolution of 1905 also gave impetus to an Iranian opposition movement that had been growing since 1901³⁷.

In the course of the development of all these events in Iran, four types of thinkers emerged who may be classified as follows.

1. Positive secularists. To this category belonged Akhundzâdah and Tâlibov who had studied modern European institutions, mainly by reading Russian translations of European thinkers, and had interpreted constitutionalism according to ideals of Western democracy.

2. Secularist compromisers. Two representatives of this group were Malkum Khân and Mustashar al-Dawla who did have direct access to modern thought originating from England and France, but out of expediency they coloured their views with Islamic law and tradition.

3. Conservative religious reformers. This group contained such figures as Shaykh Fazlullah Nûrî (d. 1909), and many others. Their group was interested, at least at the out-

33) Martin, *Islam*, p.5.

34) Abrahamian, "Causes of the Constitutional Revolution in Iran", *IJMES*, X (1979), p.395.

35) For more information about Mirzâ Malkum Khan and Sayyid Jamal al-Dîn Afghânî, see Abrahamian, *Iran*, p. 62-69; Algar, *Religion and State*, p. 184-205; idem, *Mirzâ Malkum Khan*, California, 1973; Keddîe, *Sayyid Jamal al-Din Afghani*, Berkeley & Los Angeles, 1972.

36) Hairî, Abdul-Hadi, *Shi'ism and Constitutionalism in Iran*, Leiden, 1977, p.23.

37) Keddîe, "Iranian Revolutions in Comparative Perspective", in *Islam, Politics, and Social Revolutions*, ed. Edmund Burke and Ira M. Lapidus, California, 1988, p.303.

set of their constitutional campaign, in making some reforms in the interest of a variety of groups. They advocated the establishment of better administration of justice and "constitution, constitution, constitution, but Islamic, Islamic, Islamic".

4. Religious compromisers. These were such people as Khurāsānī (d. 1911), Māzandarānī, Biḥbihānī (d. 1910), Nā'inī (d. 1936), and, with a more liberal attitude and more broad-mindedness, Sayyid Muhammad Tabātabāī. These were those who rose against the arbitrary rule which existed in Iran and continued to support liberal merchants, tradesmen, artisans, and whoever failed to realize the shaky position of religion in a democratic institution³⁸.

Because of the above-mentioned reasons and discontent, secret or semi-secret societies intensified their efforts. These societies, which had spread the "new learning" derived from the West and the desire for government founded on "the law", interpreting both in terms of Islam, had prepared the way for the Constitutional Revolution of 1905-6. Under the circumstances mentioned above, the nationalist movement became a dual movement against both internal misgovernment and foreign intervention. However, the Constitutional Revolution began in late 1905. When some of the 'ulamā took sanctuary (*bast*), the shah promised a "house of justice" and other concessions. But the promise was not fulfilled and a new rebellion broke out in 1906, highlighted by a new 'ulamā bast in Qum and a *bast* by fourteen-thousand bazaaris at the British legation. The Crown then promised to accept a constitution and a parliament was elected³⁹. In July-August 1906, while the 'ulamā were in Qum, the secular constitutionalists had won an important point: the initial wording, *majlis-i shūrā-yi Islāmī*, had been changed to *majlis-i shūrā-yi millī* in the final version of the *farmān*⁴⁰ granting Iran a constitution. This, however, had passed more or less unnoticed while the 'ulamā were given a tremendous welcome upon their triumphant return to Tehran⁴¹. The constitution of 1906-7 was modeled on the Belgian constitution, but two major adaptations were made to suit the Iranian situation. It recognized the existence of provincial councils and assemblies by endowing them with the authority to exercise free supervision over all laws connected with the public interest provided that they observe the limitation prescribed by law. And it acknowledged, in a number of clauses, the importance of religion in general and the religious leaders in particular. The Twelver doctrine of Shi'ism was declared to be the state religion of Iran in article 1 of the Supplementary Fundamental Law⁴². The ecclesiastical courts were given extensive jurisdiction over the shari'ah. Non-Muslims were barred from the cabinet. The Executive took the responsibility of banning heretical organizations and publications. Moreover, the 'ulamā were promised a supreme committee of five *mujtahids* who were to scrutinize the spiritual validity of all legislation introduced in-

38) Hairī, *Shi'ism*, p.235f.

39) Keddie, "Iranian Revolutions in Comparative Perspective", p.303f.

40) For further information about the *farmān*, see Browne, E.G., *The Persian Constitutional Revolution of 1905-1909*, London, 1966, p.353f.

41) Arjomand, "The Ulama's Traditionalist Opposition to Parliamentarianism: 1907-1909", *MES*, XVII(1981), p.177.

42) For Fundamental, Supplementary Fundamental, and Electoral Laws of the Constitutional Revolution, see Browne, *Persian Revolution*, p.353-400.

to Parliament until the appearance of the Mahdî. Traditional Shi'ism had been incorporated into modern constitutionalism. To paraphrase Montesquieu, the spirit of the society had helped formulate the laws of the state.

When, however, the first Parliament began to draft the constitution, trouble appeared. While many of the *'ulamâ* and their followers had expected a return to Islamic law, they were now faced with such un-Islamic proposals as the equality of all religious communities before the law. Both the constitutionalist and anti-constitutionalist *'ulamâ* opposed the principle of equality except for Tabâtâbâi⁴³. Also resistance to the judicial reforms brought them into conflicts with Westernizing modernizers such as Taqizâdah and reformist bureaucrats wanting centralized government such as Mukhbir al-Saltanah. Under the traditional system, after all, they had a position of power and prestige, most particularly in educational, financial, and judicial matters. These factors were obstacles to the creation of a uniformed national administrative and legal system. This highlights the divergence between the interests of the *'ulama* and the others (their followers and secular liberals)⁴⁴.

The Westernizers now had their first chance to be more open about their aims, as well as an incentive to do so, to make the revolution mean more than a victory for reactionary theocracy. While most of them continued to try to placate the *'ulamâ* as much as they could, many began to speak more freely on the meaning of Western constitutionalism and progress⁴⁵. Thus, it was only after the signing of the Fundamental Law and during the debates on its Supplement, that the crystallization of some of the *'ulamâ*'s attitudes towards constitutionalism, or more specifically towards parliamentarianism, took place⁴⁶. In February, as the *Majlis* began discussion of the Supplement to the Fundamental Law, Shaykh Fazlullah Nûrî was evolving a strategy to combat the secular reformers. This strategy was an attempt to build a traditionalist consistency by capitalizing on the issue of the differential rights of the Muslims and the religious minorities while at the same time seeking a rapprochement with the shah. Muhammad 'Ali Shah responded by demanding from the *Majlis* that the Law be written in accordance with the Sacred Law of Muhammad (*Shari'at-i Muhammadi*)⁴⁷. However, Nûrî's second bast in June was a tactical error because he had excluded himself from any possibility of exerting influence in the future deliberations and discussions.

The revolution became violent when Muhammad 'Ali closed the Parliament by a *coup* in 1908. Revolutionary guerillas (*fidâiyûn and mujâhidîn*) held out against the Crown in the north and then marched south to take Tehran along with Bakhtiyârî tribesmen moving up from the south. The second constitutional period saw a split between the moderates, led by clerics, and the democrats, who had a programme of agrarian and social reform. But the British and the Russians provided the revolution's *coup de grace* in late 1911. The Russians presented an ultimatum demanding, among other things, that the Ira-

43) Keddie, "The Origins of the Religious-Radical Alliance in Iran", *Past and Present*, XXXIV (1966), p.78.

44) Martin, *Islam*, p.155.

45) Keddie, "The Origins of the Religious-Radical Alliance in Iran", p.78.

46) Arjomand, "The Ulama's Traditionalist Opposition", p.175.

47) *Ibid*, p.178.

nians get rid of their pro-nationalist American adviser, Morgan Shuster. The British, who had signed an *entente* with Russia in 1907, supported Russian demands. Russian and British troops moved in during 1911-12, and the Parliament was closed⁴⁸.

Although Parliament passed some social, judicial, and educational reform measures, the revolution was chiefly political, aimed at reducing monarchical and foreign power through the introduction of a Western-style constitution and parliament. These were seen as the best means to limit autocracy. Some of the revolution's participants (particularly the constitutionalist '*ulamâ*') expected Iran and its people to be able to return to more Islamic ways, while others hoped to become more Western, if only to be strong enough to escape Western control. In this revolution, unlike that of 1978-9, few '*ulamâ*' leaders adopted a new political ideology. Many '*ulamâ*' accepted the constitution as a means both to limit the shah's power and to increase their own, while some became disillusioned by secularist law and trends and quit oppositional politics⁴⁹. However, although the constitution did not always function satisfactorily, the changes instigated and measures taken by the *Majlis* since 1909 helped to lay the foundation for introducing a reform work based on Western models. That became possible due to the powerful position of the *Majlis* in Iran's political system. More importantly, the state's accountability to the notion became irrevocably established. This last step completed the incorporation of the idea of the modern state in the political ethos of Iran.

This ideological conflict gave rise, among other things, to a considerable volume of political literature both for and against constitutionalism. Nâ'înfî, in his contributions to this literature, appeared as the most scholarly and eloquent among its various authors. The one well-argued attempt to use Shi'ite theology as the basis of an organic critique of absolutism was his treatise *The Admonition and Refinement of the People*. However, the constitutionalist '*ulamâ*' including Nâ'înfî were faced with a dilemma over the notion of sovereignty, a problem which will be discussed later in detail.

However, the pro and anti-constitutionalist '*ulamâ*' had far more in common as members of the clerical estate than either group with the secular constitutionalists or the absolutist nobility. Not only during the confrontation with the Qâjâr state in 1905-6 and later, but also during the period of polarization into pro and anti-constitutionalist camps in 1907-8, the '*ulamâ*' could or did act as a unified body when such action was required by that common interest as an *estâze*⁵⁰.

To conclude, by their involvement in the Revolution, the '*ulamâ*' contributed a great deal to the development of democratic constitutionalism. The agitation leading to the granting of the constitution was largely directed by the '*ulamâ*'. With the emergence at least of the semblance of a Western type of political life, the role of the '*ulamâ*' as sole leaders and spokesmen of popular discontent was over. It was the immediate Western

48) Keddîe, "Iranian Revolutions in Comparative Perspective", p.304.

49) Tabarî, Azar, "The Role of the Shi'î clergy in Iranian Politics", in *Religion and Politics in Iran*, New Haven, Conn., 1983, p.58.

50) Bihbihânfî and Tabâtabâfî helped Nûrî return from Shah 'Abd al-'Azîm with dignity, saving face, after the assassination of Amîn al-Sultân. Khurâsânî also tried to prevent the execution of Nûrî which deeply shocked the clerical estate. See Hairî, *Shi'ism*, p.114.

impact and the danger it presented in Iran, that accentuated the importance of the *'ulamâ's* role throughout the nineteenth century; and yet its ideological influence led to the beginning of an erection of barriers between the secular and the religious, and hence to a decline of the social and political role of the *'ulamâ*. The *'ulamâ*, by their participation in the constitutional movement, helped in the fulfillment of this paradox. They began to lose their importance as the representatives of the people because the people began to represent themselves.

3. The Dilemma Which the *'Ulamâ* Faced over Sovereignty in the Constitutional Revolution and the Supervision of the *Mujtahids*

The position of the *'ulamâ* in the twentieth century in Iran has been given legal expression and underpinning in the Constitution of 1906/1907. The election of members of the clergy to the early parliaments further reinforced the position of religious leaders as representatives of the people - a calling which they had claimed historically at any rate. Statutory legislation such as the original and late legislation laws, sealed the process of bestowing legal recognition and sanction on the clergy as one of the ranks of society. The *'ulamâ*, it is true, were faced with a dilemma over the constitution. On the one hand, they were averse to the notion of sovereignty residing in the people; the reason for this is their long-held belief that sovereignty may be delegated only to the Prophet and to the *imams*. On the other side was the belief that arbitrary rule of the Qâjâr shahs could and should be tempered by the grant of a constitution which made their decisions contingent upon the agreement of the people. The *'ulamâ* thus compromised by insisting on the provision of a principle calling for the creation of a committee of their members to advise the monarch and to supervise over the laws. This committee would somehow represent the imam's concept of social justice and the people at the same time. Of course, there was no question of infallibility for the top-ranking members of the *'ulamâ* serving on this committee of five people. Instead of a creative and innovative function, it was envisaged that the committee would exercise a protective and maintaining function: protecting and maintaining the holy law from bad decisions⁵¹.

It seems appropriate to characterize the supra-personal aspect of the political orientation of the *'ulamâ* as religious nationalism, with "their attitudes towards the parliamentary government being determined practically in accordance, that is, with their assessment of its likely effect in the strengthening or, conversely, the weakening of Islam". Veneality and personal interests apart, the general consideration which determined the *'ulamâ* attitude towards the constitution was its potential consequences for Islam⁵².

The main and only difference, one can observe, between the two leading figures in the Constitutional Revolution, Shaykh Fazlullah Nûrî and Nâ'îmî, is that the Shaykh understood that constitutionalism cannot be brought into confirmity with Islam, and he did not want at all to compromise with Western political institutions and to accept or tolerate any Western principle. As soon as he heard the terms "liberty" and "equality" he turned against them, not because he had studied them in an abstract sense, but because of the fact that equality and liberty, which he mentioned several times, were found to be

51) Akhavi, *Religion*, p.15f.

52) Arjomand, "The Ulama's Traditionalist Opposition", p.185.

contrary to Shi'ite Islam⁵³. But it must not be forgotten that the idea of equality, as interpreted in the West, was not favorably received not only by Iran but in the Middle East as a whole, because of its substantial conflicts with Islam. Almost all Muslim reformers accepted equality in theory, but they interpreted the idea within the framework of Islam. The principle of equality, like many other democratic principles, cannot be applicable, in a system formed by Islam, in the Western sense. However, since the concepts of equality and liberty had not been correctly and fully interpreted and elaborated by Muslim theorists, differing ideas emerged among the Persian *'ulamâ* in the course of the Revolution⁵⁴. "While Nûrî was rejecting these principles without any attempt of compromise, Nâ'îni who was not aware of the meaning of liberty and equality in democracy, made an attempt to reconcile these modern principles with Islam⁵⁵. He hoped that by this reconciliation, two principle results would follow: first, that the tyrannical regime would disappear, and second, that Islam would be protected to a certain extent.

Nâ'îni divides rulership into two categories:

1. tyrannical, which is based on the unlimited power of the ruler, 2. conditional, limited, and constitutional. The latter type is, of course, based on law, justice and the responsibility of the ruler; therefore, to prevent any inclination to tyranny, the holder of power should be limited and should be kept under close watch.

Nâ'îni, on another occasion, discusses the problem of the *'ulamâ*'s involvement, and, through his reasoning, shows how it becomes an obligatory duty to overthrow the old regime and change it into a constitutional form. He says that the tyrannical rule consists of three kinds of injustice: 1. injustice to God; 2. injustice to the *imam*; 3. injustice to the people. But a constitutional regime consists only of one sort of injustice: that which applies to the *imam*⁵⁶.

The basis for this point is that the representative of the people has no authority in *sharî'a* affairs, responsibility for which devolves on the deputies of the imam, as Shaykh Fazlullah explains: "*Vilâyat* in the time of the absence of the *imam* devolves on the *fuqahâ* and the *mujtahids*, not just on any grocer or draper depending (for his authority) on the will of the majority". He further explains that participation in the affairs of the community by anyone other than the *imam* amounts to "denigrating the authority of the Prophet and the *imam*". Nûrî was at pains to attack representation and the will of the people because they were elements in legitimizing the doctrine of constitutionalism as a political theory: he recognized that the enactment of the will of the people by the re-elected representatives in the parliament had a much stronger claim to legitimacy than any theory the shah could produce, and threatened the Shi'ite chain of divine will, Prophet, *imam* and *'ulamâ* in a way the shah could not⁵⁷. That is why he supported the shah against the constitutionalism. In addition, "the will of the people meant the will of the individual members of the nation regardless of creed". Such a notion was in conflict with

53) Hâiri, *Shiism*, p.234.

54) *Ibid*, p.226f., 232.

55) *Ibid*, p.234.

56) *Ibid*, p.102f.

57) Martin, *Islam*, p.182f.

Shi'ism which legislated for the Islamic community not the nation, and gave precedence to Muslims. According to him, the representation of the people was not a legitimate source of authority for the making of laws and legislation was contrary to Islam. Shaykh Fazlullah preferred absolutist government not for its own sake, but because he saw it as less of a threat to Islam⁵⁸.

One of the important issues which also caused conflict among the *'ulamâ* was *mash-rûta-yi mashrû'a* discussion. Fazlullah was really demanding the replacement of the word *mashrûta* with the word *mashrû'a*; but since the word *mashrûta* was very popular at that point, *mashrûta-yi mashrû'a* made a convenient slogan to win support for what was, in effect, a constitution framed from the *shari'a*. But it was opposed by the constitutionalist *'ulamâ*⁵⁹.

While Nuri opposed the legislation and the parliament, Nâ'inî, like other Muslim reformers of the 19th century likened the idea of parliament to the concept of consultation (*mashvarat*), which is supported in the Qur'ân and Hadith. With reference to that part of the Qur'anic verse which reads "and consult with them upon the conduct of affairs" (3:159), he argued that addressees of the Qur'ân are the bulk of the people, both all those who came from Mecca to Medina after the Prophet (*muhâjirûn*), and those who joined him in Medina (*ansâr*), not only the special entourage. This Qur'anic instruction can be realized in what is now called a "national assembly"⁶⁰. Elaborating on the problem, Nâ'inî goes on to argue that "since Islamic rule is based on consultation, and since the people pay taxes to their government, all the people therefore have the right to interfere in, and watch over the state's affairs". On the other hand, he adds that,

since the interference of the people, that is to say, their participation in the elections, prevents the tyrant from exercising oppression, people's rights to and their responsibility for the state's affairs are established under the principle of *nahy-i az munkar* which is an obligatory duty of every individual and can be realized through the institution of popular elections⁶¹.

In the course of these discussions, as a consequence of the ever increasing popular clamor and excitement, the shah was compelled, on the 5th August 1906, to issue a *farmân* (royal rescript) for the formation of an assembly which was to carry out

the requisite deliberations and investigations on all necessary subjects connected with important affairs of the state and Empire and the public interest; and render the necessary help and assistance to our cabinet of ministers in such reforms as are designed to promote the happiness and well-being of Persia.

It was likewise decreed in this *farmân* that a code of regulations governing this assembly was to be prepared⁶².

In virtue of the concluding portion of this *farmân*, the regulations for the National Consultative Assembly were drafted and embodied in the electoral law, which was pre-

58) Idem, "Shaikh Fadallah Nûrî and the Iranian Revolution 1905-09", *MES*, XXIII (1987) p.51.

59) Idem, *Islam*, p.126f.

60) Hairî, *Shiism*, p.204.

61) *Ibid*, p.206.

62) For an English translation of this *farmân*, see Browne, *The Persian Revolution*, p.353f.

pared with the utmost expedition and was submitted to the shah for ratification on the 8th September 1906; he duly ratified it on the following day⁶³.

The electorate was divided into six estates: 1. the princes and the Qâjâr tribe; 2. the aristocracy and nobility; 3. the 'ulamâ and their theology students; 4. landowners and farmers; 5. merchants; and 6. the guilds. The following, however, were disenfranchised: landowners owning land worth less than one thousand *tumans*; merchants without a definite place of business; shopkeepers who paid less rent than the local "average"; and tradesmen, craftsmen, and workers who did not belong to a recognized guild. Many of the low-paid, unskilled occupations were excluded. It was stated that candidates must be Muslims unless they represent the Christian, Zoroastrian, or Jewish communities⁶⁴.

The most pressing duty of the *Majlis* was the drafting of the Fundamental Law of the Constitution. The chief aim of the framers of this law was to deprive the monarch of his arbitrary power and to ensure the functioning of the country on democratic lines. It was signed by the shah on the 30th December 1906⁶⁵.

Fundamental Law of the Constitution consists of 51 articles relating to the constitution of the *Majlis*, its deputies, limitations and rights, the drafting of laws and conditions regulating the formation of the Senate. No provision was made for the convening of the Senate within a specified time (articles 43-47 about the Senate), and it was laid down that, pending the convocation of that body, all bills that had been approved by the *Majlis* and had received the royal assent should have the force of law.

Naturally enough, the powers of the shah were curtailed by a number of articles. Although he remained head of the state, he had to govern through his ministers who were responsible not to him but to the parliament⁶⁶. The *Majlis* was convened and the Fundamental Law approved a law that aimed only at the supervision of the process of the establishment of the *Majlis* and the definition of its functions and jurisdiction. According to its article 16; "all laws necessary to strengthen the foundation of the state and throne and to set in order the affairs of the Realm and the establishment of the ministries, must be submitted for approval to the National Consultative Assembly".

There is no mention of the rights of the people, nor of the principles of national sovereignty, as there is no mention of the principles of the separation of powers, responsibility of government to the parliament, the judiciary power, and many other fundamental rights. Thus, the *Majlis* decided to proceed with the Supplement of the Fundamental Law in 1907. Its draft was prepared and brought to the *Majlis* and caused much debate⁶⁷.

63) Lockhart, Laurance, "The Constitutional Laws of Persia: an Outline of their Origin and Development", *MEJ*, XIII (1959), p.376f.

64) Abrahamian, "The Crowd in the Revolution, I", *Iranian Studies* (Autumn 1969), p.142. For an English translation of the electoral laws of Persia, see Browne, *The Persian Revolution*, p.355-361.

65) Lockhart, "The Constitutional Laws of Persia", p.377.

66) *Ibid*, p.377f.

67) Lahidji, Abdol Karim, "Constitutionalism and Clerical Authority", in *Authority and Political Culture in Shiism*, p.140.

The Supplementary Fundamental Law⁶⁸ contains 107 articles concerning the rights of the Persian nation, the powers of the Realm and their employment, the rights of the members of the *Majlis* and Senate, the vesting of the monarchy in Muhammad 'Ali Shah and his successors of the Qâjâr family⁶⁹, the rights of the throne, the powers and obligations of the ministers, the powers of the tribunals of justice, the provincial and departmental councils (*anjumâns*), the public finances and the army.

It was prepared by Taqîzadeh and another deputy for Tabriz. Although they had finished their task by May, 1907, it was not until October 7, that the shah could be induced to give his assent to it⁷⁰.

As regards the supervision of the *mujtahids*, Nûrî says:

I with the assistance of a group, presented the second article of the Supplementary Fundamental Law which authorizes the supervision of the *mujtahids* over the decision of the Assembly in all epochs. They accepted that article because they could not have rejected it. When they saw and understood that (if the article) remained without any change, they would be completely prevented from reaching their corrupt aims they did what they did and I faced what I faced⁷¹.

The amendment was finally passed on the 15th June but with a significant alteration to the version drafted by Nûrî, in that the *Majlis* was to participate in the selection of the members of the council of the '*ulamâ*. This would permit the dominant faction in the Assembly, almost certainly not in sympathy with Nûrî, to elect a council acquiescent to its views⁷². However, before this article was introduced, from the very beginning of the *Majlis*, it was decided that three *mujtahids* who were not among the representatives -ie. Tabâtabâî, Bihbihânî, and Nûrî- would appear in *Majlis* and without the advanced approval of two of the most important *mujtahids*, Tabâtabâî and Bihbihânî, none of the important issues would be resolved⁷³.

Although Nâ'înî allied with the secular constitutionalists, his view on his article was problematical. This is so because, on the one hand, he respects the freedom and rights of the people only within the limitations of the "requirements of religion", and on the other, because he sanctions the guardianship of the jurists -as authorities for determining the compatibility or incompatibility of parliamentary legislation with the Sacred Law- over the National Assembly, which is the organ of the sovereignty of the people⁷⁴.

Another confrontation involved the freedom of religion. In article 1 of the Supplement, it was stated: "The official religion of Iran is Islam, according to the orthodox Ja'farî doctrine of the *Ithnâ 'Ashariyya* (Twelver Shi'ism), which faith the shah of Iran must profess and promote". Article 8 on equality of rights also created a scandal.

68) For an English translation of the Supplementary Fundamental Laws of Persia, see Browne, *The Persian Revolution*, p.372-384.

69) Articles 36, 37, 38. These articles were superseded by others when Rizâ Shah came to the throne in 1925.

70) Lockhart, "The Constitutional Laws of Persia", p.378.

71) Hâiri, Abdul-Hadi, "Shaykh Fazlallah Nuri's Refutation of the Idea of Constitutionalism", *MES*, XIII (1977), p.332f.

72) Martin, V.A., "Shaikh Fazlallah Nuri and Iranian Revolution 1905-09", *MES*, XXIII (1987), p.39f.

73) Lahidji, "Constitutionalism and the Clerical Authority", p.140.

74) *Ibid*, p.144.

The *'ulamâ* even opposed compulsory education as contrary to the *shari'a* and under article 18 on freedom of education, a proviso for the absence of the prohibition by the Sacred Law was entered⁷⁵. They probably thought that with the introduction of compulsory education their monopoly over education would be everlasting. They were also worried about the choice of the syllabus administrative ruling like separation of gender, etc.

As far as the position of the shah is concerned, it is significant that, in article 35, it was laid down that "the sovereignty is a trust as a divine gift, confined by the people to the person of the shah". In the following articles, 36, 37 and 38, it was stated that "the constitutional monarchy of Persia is vested in the person of his Imperial Majesty Sultan Muhammad 'Ali Shah and his heirs, generation after generation". The powers of the throne were also explained in these articles. However, in article 39 it was decreed that no monarch could ascend the throne unless, before his coronation, he appeared before the *Majlis*, in the presence of its members and of those of the Senate and of the council of ministers, and undertook an oath to

preserve the independence of Persia, safeguard and protect frontiers of my kingdom and the rights of my people, observe the fundamental laws of the constitution, rule in accordance with the established laws of sovereignty, endeavor to promote the Ja'fari doctrine of the sect of the Twelve Imams and shall in all my deeds and actions consider God, from whom alone is aid derived, and seek help from the holy spirits of the saints of Islam to serve the progress of Persia.

The powers of the realm, which (under article 26) are all derived from the people, are all, under the next article, divided into the three categories of the legislature, the executive, and the judiciary. Article 38 decrees that these powers shall always be separated from one another it also deals with succession.

Article 30 states that the deputies of the National Consultative Assembly and of the Senate represent the whole nation, and not only the particular classes, provinces, departments or districts, which have elected them.

Articles 57-70 are concerned with the position, duties, and responsibilities of ministers. In article 58 it was stated that every minister must be of the Islamic faith and be of Persian birth and nationality. In article 60 it was laid down that ministers are responsible to the two houses and must appear before them when required.

Articles 71-89 are concerned with the courts of justice. As in the case of regulations regarding ministers, there are many points of similarity between these articles and those in the corresponding section of the Belgian constitution⁷⁶. In article 71 it was said that the High Court of Justice and the judicial courts are the sole tribunals that are competent for the redress of public affairs, while judgment in all matters relating to the religious (courts) law is invested in the mujtahids possessing the necessary qualifications for the function. Here appears the duality of justice. Here can also be seen the reconciling of the religious and secular government.

Articles 104-107 relate to the army. Under article 106, "no foreign troops will be allowed to serve the government nor will they be allowed either to reside in any part of the country or to pass through or into the country save in accordance with the law". This ar-

75) Ibid, p.142.

76) Lockhart, "The Constitutional Laws of Persia", p.381.

ticle was designed to prevent the shah from carrying out a *coup d'etat* with the aid of the Russians, but this article failed to prevent the shah from taking such action in 1908.

Although those responsible for drafting of the Persian Constitutional Laws had been greatly influenced by those in Western Europe, particularly Belgium, they failed to introduce any system of judicial review of the constitutionality of legislative acts⁷⁷. Nevertheless the '*ulamâ*' remained unhappy about the concessions they had made in 1907, and even though they did not raise the issue again, it had made them cooler towards the reformers.

One remarkable feature of this revolution here, for it is surely worthy to be called a revolution, is that the priesthood had found themselves on the side of progress and freedom. This, I should think, is almost unexampled in the world's history. If the reforms which the people, with their help, have fought become a reality, all their power will be gone⁷⁸.

By their active involvement in the revolution, the '*ulamâ*' contributed a great deal to the development of democratic institutions and constitutionalism. The agitation leading to the granting of the constitution was largely inspired and directed by the '*ulamâ*'. Although they realized the danger later, it was very late. With the emergence of Western type of political life, the role of the '*ulamâ*' as sole leaders and spokesmen of popular discontent was over.

4. The Islamic-Secular Alliance and the Islamic Revolution

The subsequent decade after the failure of the Constitutional Revolution was marked by weak, incompetent governments, as well as by disillusionment with the Utopian promise of constitutionalism. The pro-constitutionalist clergy, in particular, were doubly disillusioned since the changes that did occur were at the expense of their traditional functions. It began to seem, among the '*ulamâ*', that, after all, the secret of European civilization was not actually a panacea for the problems of Iran⁷⁹.

In the twentieth century, the history of the '*ulamâ-state*' relationship can be summarized as follows. Under Rizâ Shah (1925-41), the '*ulamâ*' were openly under attack and on the defensive although, at the beginning of his reign, Rizâ Shah approached the '*ulamâ*' partly because of legitimacy and partly because of lack of power. In the following period (1941-63) under Muhammad Rizâ Shah and the Musaddiq government, they were freer and able to take some open stands, issuing *fatwâs* in favour of nationalizing oil (in the 1952 period), against the emancipation of women (in the 1962 period), and so on, although in 1949 a large meeting had been convened by Ayatullah Burâjerdî to urge the '*ulamâ*' to eschew political activism. From 1963 until 1978, they again came under pressure, perhaps with less openly avowed hostility than in the 1930s, but perhaps with more covert police measures.

The Islamic revolution has brought to the fore the traditional '*ulamâ*', who, inspired by the golden age of Islam, have sealed their victory by drawing up a thoroughly religion-based constitution, replacing the state judiciary with *shari'a* courts, and denouncing Western concepts, such as democracy as heretical⁸⁰. In struggles for power that ensued,

77) Ibid, p.382f.

78) Browne, *The Persian Revolution*, p.123.

79) Tabari, *The Role of the Sh'ii Clergy*, p.59.

80) Abrahamian, *Iran*, p.530.

the religious leadership moved into the post-Pahlavī positions of control. In doing so, the Shi'ite 'ulamā assumed a political role unprecedented since the year 1501. The leading members of the 'ulamā have today become directly and primarily involved in the day-to-day business of running a government and of directing a society. In taking such direct control of the political process, the Iranian 'ulamā have been the ones who have put themselves into the unenviable position of responsibility for solving the social, political, and economic problems which Iran faces today⁸¹.

The prominent role played by Islam in the 1977-1979 revolution not only creates a paradox in Iranian history, but also seems at first glance to debunk the generally held notion that modernization brings secularization, and that urbanization strengthens the modern classes at the expense of the traditional ones; how can the paradox be explained?. This question cannot be answered without taking into account the decisive role played by Khomeini. In fact, he was to the Islamic Revolution what Lenin was to the Bolshevik, Mao to the Chinese, and Castro to the Cuban revolutions. Firstly, in a country in which most politicians lived in luxury, Khomeini led a life as austere as that of a Sufi mystic, and as devoid of material opulence as that of the common people. He was a great moralist. Similarly, in a decade notorious for cynical, bland, corrupt, and inconsistent politicians, Khomeini appeared to be thoroughly sincere, defiant, dynamic, consistent, and most important of all, incorruptible. In brief, he was a charismatic revolutionary leader at a time when such leaders were in short supply and in great demand. The second factor that explains Khomeini's prominence is his astuteness, in particular his ability to rally behind him a wide spectrum of political and social forces. Even more important, by vigorously championing a multitude of popular grievances, Khomeini won over diverse social groups, each of which saw in him their long-awaited savior. He had clearly defined aims; simple language with a certain amount of dignity and forcefulness, cutting through the multitude of pronouncements of various political groups with his tactic of polarizing political ideals and aims. The third reason for his popularity and success among the modern middle class was the phenomenal popularity of Shari'atī among the young intelligentsia. The fourth element explaining Khomeini's success among the urban working class was the vacuum created by the regime when it systematically destroyed all secular opposition parties. Whereas the clergy were permitted to go to the poor, the opposition parties were constantly prevented from establishing any form of labor unions, local clubs, or neighborhood organizations. Twenty-five years of repression placed a heavy handicap on any secular opposition

Thus, it is a combination of permanent and temporary forces that brought the clergy to power. The permanent ones include the Shi'ite culture strengthened by the exodus of the rural population to the urban centers, the historic links between the bazaaris and the religious establishment, and the recent socio-economic changes that have swept away the powerful tribal chiefs, the large landlords, and the other rural magnates. The temporary factors that account for clerical ascendancy include the charismatic personality of Khomeini, the intense aversion felt by the public for the shah, and the organizational handicaps that the regime had for a quarter of a century placed on the secular political parties⁸².

81) Bill, "Power and Religion", p.30f.

82) Abrahamian, *Iran*, p.531-7.

Few modern revolutions have given rise, in so short a period, to such gaping disparities between the expectations of its supporters and the emergent reality as did the Iranian Revolution of 1979.

For certain strata of the population -national and ethnic minorities- the disillusionment came in the first few weeks and months, as they found themselves under attack with their rights curtailed and all hopes for a blossoming of national and democratic liberties crushed. Even before the first anniversary of the fall of the Pahlavis, political forces such as the National Front and the Freedom Movement, headed by Bazargân, had already been forced out of governmental positions into opposition, to be joined a short while later by Benî Sadr and his supporters. The Mojâhedîn, after suffering continuous attacks over a period of two years, were finally forced into frontal opposition in July 1981, and have lost thousands of militants since the secular left enjoyed barely six months of open activity before the first organized wave of repression in August 1979⁸³.

The clergy alignments, we see in retrospect, included men supporting Khomeini's unremitting position of a totally Islamic system (Mahallâtî, Rabbânî, Muntazirî, for example); those preferring the clergy to play the role of guardians of the political order (Sharî'atmadârî, Gulpâyigânî); those who preferred to have nothing to do with politics but preferred to teach fiqh (Khû'î, for instance)⁸⁴.

The most important rival of Khomeini was Sharî'atmadârî. He did not regard the abolition of monarchy *per se* as a goal. The mere replacement of the monarchy by a republic (Islamic), he argued, would be meaningless, unless the action were complemented by full democratization. What is more important in his view was the implementation of the constitution and the safeguarding of the democracy⁸⁵. According to him, "it is not the form of government that is important, but the way it behaves". He repeatedly emphasized that he considered the main goal of the revolution to be the enforcement of the 1906 constitution. Mahallâtî's modernization is undoubtedly more traditional than Khomeini's radicalism⁸⁶.

As mentioned before, those currents, and individual politicians who originally considered themselves part of the post-revolutionary alliance and were subsequently driven out, have presented remarkably similar reasons for the way events have turned out

According to the National Front, in the name of Islam the population was deceived by those who had designs to monopolize power -that is, the Islamic Republican Party, which in fact controls all institutions of state power in Iran today. The IRP is accused of opportunistically having used the religious sentiment of the masses to brand all its opponents as "enemies of Islam", to cover up their own faults and inadequacies, and for the purpose of imposing their sole authority over society.

Bazargan attributes the IRP's take-over of all state institutions to a certain type of ideological elitism: "sectors of the clergy, the IRP, the revolutionary youth genuinely be-

83) Tabari, Azar, "Mystifications of the Past and Illusions of the Future", in *The Iranian Revolution and the Islamic Republic*, eds. Keddie & Eric Hooglund, New York, 1986, p.147.

84) Akhavi, *Religion*, p.170.

85) Menashri, David, "Shi'ite Leadership: in Shadow of Conflicting Ideologies", *Iranian Studies*, XIII (1980), p.127f.

86) *Ibid*, p.137f.

lieve that only they know what is best for the people and the revolution". Banî Sadr, since moving into exile, has become much more categorical: he accused Khomeini in person of "betraying his own promises and of having turned into a dictator". According to him, in Paris, in the last few months before the revolution, Khomeini abandoned an idea -*vilâyat-i faqîh*- he had developed over the last thirty years and accepted that government was accountable to the governed and not to God⁸⁷.

As far as the *Mujâhidîn* are concerned, they asserted that Khomeini usurped the leadership of the movement and snatched the revolution, using the open status and relative security of the mosques during the Shah's reign, combined with the authority of Islam, to organize and to fill the political vacuum left as a result of the repression of all other political forces. Although the *Mujâhidîn* were critical of the constitution and the formalization of the position of *vilâyat-i faqîh* within it, they nevertheless declared their acceptance of Khomeini as the supreme leader of the people in his lifetime. In December 1979, they proposed that Khomeini personally should stand as the presidential candidate. Only after it was clear that he had no such intentions, did the *Mujâhidîn* leader Rajavî stand as a candidate, only to be disqualified by Khomeini himself for his opposition to the new constitution⁸⁸.

To conclude, the Islamic Republic, on the other hand, by basing itself solely on religion, has dissolved the historic tension between secularization and Shi'ism by abrogating the nationalist idea along with secularization and by committing itself to building a theocratic state and reconstructing some kind of Islamic religious community. But when it is changed, secularism will of necessity be a central political issue. This is already indicated by the heated debates amongst oppositionists of various shades on the issue of separation of religion and state. Old debates and old political line-ups collapsed in the face of an unforeseen and unpredicted revolution; new line-ups are shaping up around issues posed by this new development⁸⁹.

5. Sovereignty and the Juristic Authority of the 'Ulamâ

As we have mentioned, the *Usûlîs* won in the conflict with the *Akhbârîs* in the eighteenth century. Khomeini took the *Usûlî* view to its most logical conclusion with the understanding of *vilâyat-i faqîh*. However, Khomeini's views contradict the conceptions held by the religious leadership in the past. Even the activist clerics who supported the constitutional movement at the beginning of the century had held the rule of the infallible *imam* as "presently impossible". They put forward an article for the supervision of the Assembly to establish a board of *mujtahids*⁹⁰. By passing Nâ'îni's legitimation of constitutional government completely, Khomeini extended the early *Usûlî* arguments such as Naraqî's, which were designed to establish the legal authority of the Shi'ite doctors (jurists), to eliminate the duality of hierocratic and temporal authority altogether. Although Khomeini cited Naraqî as a forerunner, the latter's *Awâyid al-Ayyâm*, the only legal work Khomeini referred to in support of his theory of the mandate of the clergy, points only

87) Tabari, "Mystifications of the Past", p.148-154.

88) Ibid, p.154-6.

89) Ibid, p.161.

90) Menashri, "Shi'ite Leadership", p.126f.

to an implicit invidious contrast between religious and political authority. The primary object of Naraqî's discussion of the mandate of the jurist is to strengthen the juristic authority of the Shi'ite doctors on behalf of the Hidden Imam. But Khomeini categorically states that "the mandate (of the clergy) means governing and administering the country and implementing the provisions of the Sacred Law". For him, "Islamic government will differ from the representative and/or constitutional monarchies because of the elimination of the separation of powers that Islamic government will implement". Thus, having firmly rejected the separation of religion and politics, he argues that in the absence of the imam, sovereignty devolves upon the qualified jurists or the Shi'ite religious leaders. It is therefore the religious leaders as the authoritative interpreters of the Sacred Law of Islam who are entitled to sovereignty⁹¹. Sovereignty would belong to the clergy on behalf of God. There would be no room for the sovereignty of the people nor for the supremacy of the state as the presumed embodiment of the national will⁹².

Khomeini's exposition is interesting in a number of respects. First, he explicitly claims that a jurisprudent has the same authority that the Most Noble Messenger and the *imam* had. While careful to distinguish the ontological status of the *faqîh* from that of the *ma'sûmîn* (the immaculate *imams*), he is emphatic in asserting that the *faqîh* enjoys the extrinsic -that is, political- powers of the *imam*.

Second, while Khomeini is clearly convinced that this *vilâyat* is best supported from reason, he is careful to devote an extraordinary amount of time to arguments from tradition⁹³. However, Khomeini justified his position on the purely pragmatic grounds of the necessity of the maintenance of order in society. According to him, the faithful and the *faqîh* will not be in contradiction; but were such an unexpected event to occur, then he is in no doubt that it is the *faqîh* who has superiority⁹⁴.

Third, Khomeini defines the *vilâyat-i faqîh* as an institution for ensuring the rigorous application of *sharî'a* to Muslim society. Fourth, he tends to conflate a number of arguments for the establishment of an Islamic government, for his interpretation of *vilâyat-i faqîh*, for a political revolution against oppressors and tyrants -in ways which suggest that he sees a relationship among them which gives a programmatic coherence. Further, Khomeini's argument for the *vilâyat-i faqîh* rests on the religious authority of jurists as the justification for their political authority⁹⁵.

Since the outbreak of the active opposition movement in the autumn of 1977, public attention, both inside and abroad, has been focused predominantly on Ayatullah Khomeini and his fundamentalist ideology to such an extent that some observers have equated his concepts with Islam or at least with the traditional Shi'ite sect of Islam. But there was an ideological gulf between several *ayatullah uzmas* (grand ayatullahs). The most striking was the divergence of ideology between the two highest ranking ayatullah, Khomeini and Sayyed Mohammad Kazem Shari'atmadairi⁹⁶. Thus it will be useful to see the

91) Arjomand, "The State and Khomeini's Islamic Order", p.154f.

92) Ibid, p.156.

93) Rose, G., "The Thought of Khomeini", in *Religion and Politics in Iran*, ed. Keddie, p.177-183.

94) Halliday, "The Iranian Revolution", p.189.

95) Rose, "The Thought of Khomeini", p.183-7.

96) Menashri, "Shi'ite Leadership", p.120.

differences of ideas between the two in order to understand the character of divergence between the 'ulamâ before and after the revolution.

While Khomeini considers Islam the only source of law, Shari'atmadarî advocates an Islamic order in which the principles of Islam are (only) respected. His views fully correspond with those of the political groups collaborating in the Khomeini coalition. According to him, the main goal of the opposition movement against the shah was to end the dictatorial rule and to establish a democracy based on the will of the people in the light of Islamic law. His conception of republic is much closer to that found in Western democracies. In his view, "the government of God is the government of the people, by the people. Islamic regime is a democratic regime based on the people's will". In the Islamic state, he said, "the people are sovereign. Islamic republic means that there would be no dictatorship and no despotism; the people themselves will have the sovereignty to decide their path". Thus he called his party "The Islamic People's Republican Party".

According to Khomeini, the clerics are the only legitimate source of authority, while to Shari'atmadarî the clerics, whose role is a spiritual one, should not interfere in affairs of the state. In Shari'atmadarî's view, "it is not the form of government that is important, but the way it behaves". Shari'atmadarî repeatedly emphasized that he considered the main goal of the revolution to be the enforcement of the 1906 constitution. He would be satisfied with mere reactivation of the clause in the constitution of 1906 providing for a board of five *mujtahids* to review legislation and invalidate laws contradicting Islamic precepts.

Shari'atmadarî was also strongly opposed to Khomeini's interference in day-to-day politics as well as to the activities of the extra-governmental bodies -the council of the revolution, the revolutionary committees, the guardians of the revolutions, and the revolutionary courts- of stripping the government of most of its powers and "turning it into a knife without a blade". Significantly, he opposed the philosophical underpinnings of these bodies as well as the ideology of Khomeini himself⁹⁷.

The most outstanding difference between them was over the way the divine law should be interpreted and, more significantly, how it should be applied in the twentieth century. While Khomeini advocates a complete return to the ideal model of pure Islam as it was in the era of the Prophet and his immediate successors, Shari'atmadarî is, however, aware of the changes that have occurred in Islamic society since the ideal states of Muhammad and 'Ali and he advocates the use of *ijtihad* to adapt Islamic doctrine to the requirements of modern society⁹⁸.

As regards the character of the revolution, the fundamentalist view held by Khomeini extends far beyond the borders of Iran; it embraces pan-Islamic motifs and aims at the attainment of an Islamic unity that would enable Muslims to play the role ordained for them in human history. Khomeini defines himself as an "Iranian", but as a "Muslim", and represents the revolution in Iran as only the first stage in a comprehensive Islamic revolution. The very concept of nationalism is alien to him, opposed to his ideology, and viewed by him as an "imperialist plot" to weaken Islam. According to him, "Imperialism has divided Muslim motherland and transformed the Muslims into nations (*Shu'ûb*)⁹⁹.

97) Ibid, p.124-134.

98) Ibid, p.122f.

99) Abrahamian, *Iran*, p.531-7.

When the Pahlavî dynasty was overthrown, the initial confrontation took place over the referendum. The revolutionary authorities intended to give the people the choice of a "yes" or "no" vote, on the proposal to establish an Islamic republic. Most of the secular parties, supported by Ayatullah Shari'atmadarî, called for an open referendum, a wider choice of options, or, at the very least, a choice between an "Islamic" or a "democratic" republic, and an Islamic republic or a republic plain and simple. Khomeini addressed this issue before a great crowd on his return to Qum on the 1st March, when he asserted that "what the nation wants, is an Islamic republic not just a republic, not a democratic republic, not a democratic Islamic republic. Do not use this term, democratic, this is the Western style".

The task of drawing up the new constitution, fell to the provisional government and primarily to Mahdî Bazargân's minister of state for revolutionary affairs, Yadullah Sahâbî. Sahâbî and his colleagues drew on a partial draft constitution based on the Iranian constitution of 1906 and the constitution of France's Fifth Republic. Its most prominent feature was a strong presidency based on the Gaullist model. Like the 1906 constitution, the draft provided for limited individual rights and freedoms. It also paid lip service to the idea of an Islamic state. But it reserved no special authority for the religious classes, it made no mention of the doctrine of vice-regency of the *faqîh*. A council of guardians was introduced¹⁰⁰.

The assault on the draft constitution by secular parties led Khomeini to spur the Islamic groups to a counter attack. The debate on the constitution revealed a deep cleavage. The final version of the constitution that was published on the 4th November 1979 was therefore much closer to what the radical *'ulamâ* wanted. The constitution was approved by a referendum in December 1979. This constitution was opposed by the National Front and Ayatullah Shari'atmadarî. The latter protested that the concept of *vilâyat-i faqîh* was not indisputably established in Shî'ite jurisprudence, nor was there only one *marja'at-i taqlîd* - indeed, if anything he was senior to Khomeini¹⁰¹.

The question has arisen as to how the constitution would be finalized. Khomeini insisted upon a consultative committee of 45 individuals, while Shari'atmadarî demanded the election of a constituent assembly to be composed of 275 deputies. Finally, a council of experts composed of 75 was elected to finalize the draft constitution already prepared by the council of the revolution¹⁰². Some fifty-five of those elected were clerics. Over fifty were candidates directly sponsored by the IRP coalition¹⁰³.

The Revolutionary Committees that were set up in every town to keep the revolution on its Islamic course soon became an alternative government to Bazargân and his cabinet. These committees began executing hundreds of people, some on comparatively minor charges and some without trial. It became clear the Bazargân's government was unable to exert any control over these committees¹⁰⁴.

100) Bakhsh, Shaul, *The Reign of the Ayatollahs* (London, 1985), p.72-77.

101) Momen, *An Introduction*, p.291.

102) Menashri, "Shi'ite Leadership", p.135.

103) Bakhsh, *The Reign of the Ayatollahs*, p.81.

104) Momen, *An Introduction*, p.292.

In the presidential election, Abu'l Hasan Bani Sadr won and was instated by Khomeini on the 4th February 1980. However, Banî Sadr had no real party political machine and in the elections for the National Assembly, the IRP, by a number of tactics, such as announcing the need to screen all candidates on their Islamic credentials and pre-revolution activities and suspending elections in some areas because of lack of security, succeeded in winning 130 of the 270 seats. This gave them a majority in the Assembly since 30 seats could not be filled because of unrest in the Kurdish cities and elsewhere. The Assembly began to function on the 19th July 1980.

However, it is clear that there was among the people a growing disillusionment with the Revolutionary Government. Of a total electorate of about 24,000,000, about 20,400,000 had voted in the referendum for the Islamic Republic in March 1979; 14,000,000 in the presidential election of January 1980; and only 6,100,000 in the first stage of the National Assembly elections in March 1980. After this, punitive measures were decreed for failure to vote and numbers rose again¹⁰⁵.

For a decade, Khomeini's theory has been embodied in the Constitution of the Islamic Republic of Iran¹⁰⁶. On the basis of a revolutionary reinterpretation of the *vilâyat-i amr* and an equally revolutionary reinterpretation of the imamate as the principle of continuous theocratic leadership, the ruling jurist is identified as the *vâli-yi amr* and his supreme office is interchangeably defined as "imamate" and "leadership"¹⁰⁷. The Constitution of the Islamic Republic of Iran was prepared in twelve parts comprising one-hundred and seventy-five articles. The constitution defines the Islamic Republic as an order based on the belief in: 1. "the one God (there is no god but God) and the restriction of sovereignty and legislation to Him, and the necessity of submission to His command...5. imamate and continuous leadership, and its fundamental role in the perpetuation of the Islamic revolution" (article 2). In article 12, it is stated that "the official religion of Iran is Islam of the Ja'fari Twelver sect and this article is unalterable in perpetuity".

According to article 5, during the occultation "the *vilâyat-i amr* and imamate of the *umma* is upon the just and pious jurist". A commentator on the constitution unabashedly declares that the *ûlî al-amr* in the Qur'ân (4:63) refers equally to the *imam* and the deputy (*na'ib*) of the *imâm*, and the deputy of the *imam* is the jurist who is installed in this position with the necessary conditions¹⁰⁸. Once an Islamic regime is established, Khomeini makes it clear, the duty of the people is to obey in accordance with the above-mentioned Qur'anic verse¹⁰⁹. Thus the new constitution makes the *faqîh* the central figure in the political order, enshrines the dominance of the clerical community over the institutions of the state, entrenches Islamic jurisprudence as the foundation for the country's

105) Ibid, p.293.

106) For an English translation of the Islamic Constitution of Iran, see Rouhollah K. Ramazani, *MEJ*, XXXIV (1980), p.181-204; and *Constitution of the Islamic Republic of Iran*, tr. Hossein Mohyeddin Ghomshei, Tehran, Min. of Islamic Guidance, 1985.

107) Arjomand, "The Ideological Revolution in Shi'ism", in *Authority and Political Culture in Shiism*, p.195.

108) Ibid.

109) Zubaida, Sami, "The Ideological Conditions for Khomeini's Doctrine of Government", *Economy and Society*, .II (1982), p.153.

laws and legal system and limits individual freedoms to what was considered permissible under the Shi'ite Islam. The constitution provides for a twelve-man Council of Guardians empowered to veto all legislation in violation of Islamic constitutional principles and reserved to the six Islamic jurists on the council the power to declare laws in conflict with Islam. "All civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulations", article 4 of the constitution states "must be based on Islamic criteria".

The constitution provided for a president who had lost the bulk of his powers to the *faqih*, however, for a cabinet headed by prime minister who would be appointed by the president and confirmed by parliament; and for a single chamber legislature (*Majlis*) whose legislative authority is considerable but subject to the control of the Council of Guardians¹¹⁰. In article 57, it is also stated that the sovereign powers in the Islamic Republic are the Legislature, the Executive and the Judiciary, which are exercised under the supervision of the religious leadership (imamate). Thus, there is a limited sovereignty.

Articles 107-112 spelled out the powers and mode of selection of the *faqih*. Article 107 recognized Ayatullah Khomeini as the *faqih* of the Islamic Revolution. Article 110 asserted the pervasiveness of the power of the *faqih*. The constitution authorized the leader to appoint the jurists on the Council of Guardians, the chief officials of the judiciary branch. This was also authorized to approve candidates running for the office of president and to dismiss the president after he had been declared incompetent to serve by parliament or found negligent in his duties by the Supreme Court. The constitution conferred vice-regency on Khomeini for life and provided for him to be succeeded either by an equally qualified jurist or in the absence of such a candidate, by a council of three to five jurists to be elected by yet another Assembly of Experts.

Many members considered article 6, which treated sovereignty as stemming from the popular will, to be in conflict with the vice-regency of the *faqih*. The constitution, however, left these two concepts of sovereignty standing side by side in uneasy or -given a different perspective- creative symbiosis. The 1906 constitution, at an earlier time and in similar fashion, had declared sovereignty to be a divine gift bestowed by the people on the monarch. The 1979 constitution was a reminder that seventy years after the Constitutional Revolution, Iranians were still uncertain whether it was the people or the clerics as representatives of the *hidden imam*, who ruled¹¹¹.

The principle of consultation (*shûrâ*) makes its appearance only in article 7. It is accepted, but as a subsidiary to the principle of imamate Islamic consultation is only possible when the imamate is dominant. In other words, consultation is at the service of the imamate. The Qu'ânic verse 3:153 (*wa-shâwirhum fî al-amr* etc.) is said to imply that the actual decision-maker is the Prophet who was also the *imam*. Madani in his commentary says that the advocates of the *shûrâ* (Sahâbî and Bihishtî) during the drafting of the constitution either did not firmly believe in Islam or were contaminated by "syncretic" thinking, and were trying to link the *shûrâ* to the principle of national sovereignty¹¹².

110) Bakhsh, *The Reign of the Ayatollahs*, p.83.

111) *Ibid*, p.88.

112) Arjomand, "The Ideological Revolution in Shi'ism", p.196.

In Khomeini's Islamic order, the state has not been constitutionally weakened but also made "Islamic", i.e. manned, in so far as possible, by reliable Islamic personnel and brought under direct or indirect clerical control¹¹³.

As we have seen, Khomeini's theory of theocratic government extends the *Usûlî* norm of juristic authority as elaborated in the nineteenth century into a new sphere previously covered by its government. As pointed out earlier, Khomeini argued that during the occultation of the *imam*, his right to rule devolves upon the qualified '*ulamâ*. This formulation still preserved the Shi'ite juristic pluralism. About a year or two later, Khomeini attempted to reduce this juristic pluralism to a unitary theocratic leadership. Secular theories of government such as democracy and sovereignty of the nation apart, Khomeini's theory of the mandate of the jurist is open to two forceful objections. The first is that the mandate or authority of the Shi'ite '*ulamâ* during the occultation of the Twelfth Imam cannot be extended beyond the religio-legal sphere to include government. The second objection is that the mandate in question refers to the collective religio-juristic authority of all Shi'ite jurists and cannot be restricted to that of a single supreme jurist nor, by extension, to a supreme council of three to five jurists (as envisioned in the constitution of the Islamic Republic). The above doctrinal objections to *vilâyat-i faqîh* had in fact been voiced by the *marâji-i taqlîd*, Khu'î, Shari'atmadarî, Qummî, and a number of ayatollahs¹¹⁴.

To establish and propagate their new conception of authority, the clerical rulers of Iran have increasingly insisted on the sacred character of all authority and thus ongoing sacralization of political order. On occasion, the sacralization of politics even necessitates going beyond the requirement of the Constitution of the Islamic Republic. For instance, according to the constitution, participation in the elections is voluntary. However, people were usually enjoined by Khomeini and the religious authorities to participate in the elections as Muslims fulfilling a religiously incumbent duty. However, even though this matter becomes incumbent according to the Sacred Law, non-participation is (punishable) not materially, but spiritually.

The paradox of the actual insignificance of the political ethics in the Shi'ite Sacred Law against the claim of the Shi'ite clerics that Islam is a total way of life and a total ideology, which is above all political and activist, has struck some observers. For some ten years, the clerical rulers of Iran sought to resolve this paradox by using the legal distinction between the primary rulers (*ahkâm awwaliyya*) and secondary rulers (*ahkâm thanawiyya*). The first derive from the sources of *sharî'a*, the second from expediency as the prerequisites for the implementation of the primary rules. The device has enabled the ayatollahs to Islamicize and appropriate an enormous amount of European legal material through the revision of the codes of the constitutional and Pahlavî periods as laws necessary for the maintenance of order which in turn make possible the implementation of the primary rules of the *sharî'a*. More importantly, both categories of primary and secondary rules were said to be binding on the believer as a religious obligation. Thus, for the first time in Shi'ite history, sacrality was claimed for a category of secondary com-

113) Idem, "The State and Khomeini's Islamic Order", p.160.

114) Idem, "The Ideological Revolution in Shi'ism", p.196.

mandments as a result not of the juristic competence of the Shi'ite 'ulamâ but of their alleged right to rule¹¹⁵.

Ayatullah Khomeini, who had anticipated a devastating power struggle following his death, hand-picked Muntazarî as his successor. In 1983, he called for the convocation of the Assembly of Experts to decide about his successor. According to the constitution (afore-mentioned), Khomeini would be succeeded either by another equally qualified and universally recognized Islamic jurist or, if no such single individual exists, by a council of three to five jurists selected by an Assembly of Experts (article 107). As was expected, the Assembly picked Muntazarî in November 1985. In spite of some opposition by some other clerics, Khomeini reconfirmed him as his successor in December 1985. Another powerful cleric, the present President Rafsanjani, was able to convince Khomeini that Muntazarî would harm the Islamic Republic should he remain in his position as Khomeini's successor. Muntazarî's removal in April 1989 showed Rafsanjanî's talent in outmanoeuvring his rivals and establishing himself as the real power-broker in Iran.

Ayatullah Khomeini died on the 3rd June 1989. The Assembly of Experts immediately appointed Khamana'î as his successor and granted him the position of ayatullah. Khamana'î owes his position to Rafsanjanî who reportedly supported his appointment¹¹⁶. It is difficult to predict anything about the future of a country which has puzzled millions of people throughout the world. Iran -a country in the midst of huge changes- might still surprise social scientists and political observers. No longer do the middle and upper classes that tend to emulate the West have a monopoly of power as it was in the Pahlavi reign. However, Khomeini's death followed a devastating power struggle. It is also probable that the clergy can lose their organizational monopoly once the secular forces catch their breath and start establishing roots among the discontented classes, especially among the intelligentsia, the urban proletariat, and the rural lower classes. But whether it will be the older organizations or those of more recent origin that will attract the discontented classes is a question left to posterity.

115) Ibid, p.202f.

116) Amjad, Mohammad, *From a Royal Dictatorship to Theocracy*, New York, 1989, p.154-6.