

Iran Since the Revolution

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a person is not recognized by the majority of the people, then a single leader or a leadership council composed of three to five theologians chosen by an assembly of popularly elected experts will assume his functions.

Another general principle which has alarmed some of the neighbouring Islamic states is number 11, which makes the new Islamic Republic duty-bound to pursue a pan-Islamic objective for the political, economic and cultural integration of Islamic nations. This principle, along with the first, is the main bone of contention between revolutionary Iran and Iraq and the other smaller Persian Gulf states, some with large Shiite minorities.

As to the concept of popular sovereignty, Chapter Five of the constitution grants absolute sovereignty to God, but recognizes that God has made man self-sovereign and that this divine right cannot be wrested from him or be put at the service of any particular group or individual. Functionally separate, legislative-executive-judicial powers are derived from the state's sovereignty and 'will be exercised under the aegis of the Regent of Faith and the People's Imamate.'

To bolster Khomeini's power and fidelity to Islamic concepts, the constitution imposes a further check on a popularly elected unicameral parliament. This is done under Article 91, which requires the formation of a 12-man Council of Custodians in order to 'safeguard Islamic injunctions and the constitution *vis-à-vis* parliamentary enactments.' Half of the council will be elected by the leader or leadership council from amongst 'just and well-informed' theologians. The other half is to be nominated by the supreme judicial council and approved by the parliament, from amongst Islamic jurists.

A fascinating device which assures this council's superiority over parliament is that the latter will not be legal unless it has elected the second half of the former's membership. The absence of either half of the membership of this council would virtually paralyse the National Consultative Assembly, or Majlis, as the embodiment of the legislative authority stemming from popular sovereignty. Further, the council has ten days in which to ascertain the compatibility of legislation with Islamic principles and the constitution. If they are found unacceptable, they will be returned to the Majlis for revision. Judicial review is given to the majority of theologians of the council concerning parliamentary legislation, and to the majority of the entire council concerning its constitutionality. Thus, in two ways popular sovereignty is denied the Majlis. One, through the refusal of the council to constitute itself and the other by vetoing its legislation as either anti-Islamic or anti-constitutional.

The constitutional provision concerning the supreme leadership of the country is contained in Chapter Eight of the constitution and expands on the concept of Velayate Faghih enumerated in Chapter Five. It also lists the prerogatives and duties of the leadership, which include the appointment of theologians of the Council of Custodians, appointment of the highest judicial authority, assumption of the supreme command of the armed forces, presiding over the supreme council of national defence, declarations of war and peace, approval of the presidential candidates and the President's official appointment once elected, and dismissal of the President with the approval of the supreme court and the Majlis.

Articles on the executive power place the President below the supreme leadership as responsible for the implementation of the constitution and the co-ordination of the tripartite powers and presiding over the executive power, except when it is assigned to the supreme leader. A cause of contention among non-Shiite Iranians is that the President should be of the Twelfth Imam Jaafari sect of Shiadom. In the wake of serious clashes between Sunni Baluchies and Shia Sistanies at the end of December, Khomeini promised a modification of the constitutional provision regarding Iran's state religion so as to legalize Sunni judicial and religious practices in areas with dominant Sunni populations.

A further innovation relates to the armed forces. The revolutionary guards replace the old gendarmerie as a counterweight to the army, whose loyalty continues to be suspect. In foreign policy, non-alignment is recognized as the main characteristic, but it also provides for the defence of the rights of all Moslem people.

Chapter Three relates to the rights of citizens and contains many liberal-sounding principles. Equality of rights for men and women irrespective of race and colour is recognized. Principle 20 provides for guarantees of all human, political, economic, and social and cultural rights for men and women, 'in accordance with Islamic standards.'

Principle 24 provides that the Press will be free to express opinions, unless they are contrary to Islamic tenets or public rights. Parties, political groups, professional and trade associations, and Islamic and recognized minority religious associations are allowed on the condition that 'they will not violate independence, freedom, national unity, Islamic standards and Islamic Republic's foundation.'

It is evident that the above rights are seriously restricted by the provision that they should not contravene Islamic principles or public rights. Thus, not only are such religious minorities as the Bahais not

so recognized, but literally interpreted, these provisions do not allow for parties and groups opposed to or different from the prevailing single Islamic ideology.

Concerning the organization of the state institution, Principle 57 recognizes the separation of the three powers, legislative, executive and judicial, but puts them under the auspices of Velayate Faghih and charges the President with the task of regulating their relationships. The legislature is a uni-cameral, consultative assembly of 270 members elected for four-year terms. Additional representatives will be elected for each 150,000 of the population after a census to be conducted every ten years.

Principle 73 prohibits the Majlis from enacting legislation contrary to the tenets and injunctions of the official religion in the constitution. The Council of Custodians would enforce this provision. The Cabinet is made accountable to the Majlis under the provisions of Principles 87, 88 and 89. Thus, the Cabinet will become official when it receives a vote of confidence from the Majlis. Members of the Majlis can impeach the Cabinet as a whole or its individual members, who will be dismissed upon a vote of no-confidence. No Cabinet, or members thereof, can be re-appointed immediately after dismissal by such a vote.

As mentioned earlier, the Council of Custodians is in effect an appointed upper house with a great deal of power in the affairs of state. Principles 91-99 elaborate its authority and its composition, but its most important power remains the power of original judicial review, as noted earlier in this chapter. Finally, the leader or members of the Council of Custodians could be dismissed by the Assembly of Experts when they are found to have violated their duty or lost their qualifications for that office. The details of the election and composition of the Assembly of Experts, which is to function as a kind of continuous constitutional convention, will be decided by the majority of theologians of the first Council of Custodians with the approval of the leaders of the revolution. Thereafter the Assembly itself will determine any changes in these provisions.

A comparison of this constitution with that of the first constitution of 1906 shows that while the latter was patterned after the Belgian or British democratic monarchical system, the former represents a peculiar mixture of the French Fifth Republic and fundamental Islamic concepts, many of which are contained in Khomeini's writing, notably his *Islamic Governance*.

In terms of the scope of power given the Faghih and *Rahbar*, which maybe one and the same as it is now, there is no doubt that his power exceeds those of the Shah, if the 1906 Constitution and its supplements

are literally interpreted. The difference is that the Faghih does not hold a hereditary office, but is elected by an assembly whose composition is determined by Khomeini as the first leader of the Islamic Republic.

As to the relations amongst the judicial, executive and legislative powers; while separation of power is recognized, the ability of the legislature to overthrow the Cabinet is acknowledged, while no such power of dissolving the Majlis is granted the Cabinet. None the less, the emergence of political parties within the Majlis is not prohibited. In reality it is known that the IRP, which controls the Majlis, also controls the Cabinet, an issue on which the crisis of Banisadr's presidency hinged.

Next to Khomeini himself the constitution entrusts tremendous powers to the Council of Custodians which could effectively paralyze the Majlis, veto its legislations, approve and disapprove presidential candidates and their election. So Khomeini literally rules the country as an elected monarch, with the help of an appointed Council of Custodians, and with a great deal of control over every branch of government.

Of course every constitution must be tested in practice so that the adequacy of its original provisions or need for revisions and amendments can be determined. In future sections of this study some of the critical tests to which the new republic was subjected barely a few months after its inauguration will be considered.

As indicated above, the constitution in its present form has been opposed by secular, religious, ethnic and national minority groups for a variety of reasons. Without a doubt, its provisions concerning the *Rahbar* (supreme leader) and/or Velayate Faghih are its most controversial features. As far as the secular democratic opposition groups are concerned, the grant of these specific powers to Khomeini, or a collective group which might succeed him, contravenes the cherished principle of popular sovereignty. They believe it entrusts to the leadership constitutional powers far beyond those embodied in the original 1906 Constitution and its four supplements enacted since.

The Shia opposition leaders who share this misgiving find another basic flaw in the document. They firmly believe that to put the highest Shia leader at the apex of this hierarchy of power, and to do so in the name of Divine Qoranic law, would expose him and Islam to political errors for which no secular or divine remedies are provided. That is to say, every other authority under the constitution is made somehow accountable to the supreme leader or to several collective bodies. It is