

Islamic Constitutionalism in Theory and Practice: The Case of Islamic Republic of Iran^(*)

Teorik ve Pratik Boyutlarıyla İslami Anayasacılık:
İran İslam Cumhuriyeti Örneği

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Abstract:

This article explores the theoretical and practical dimensions of Islamic constitutionalism, questioning its feasibility within modern state frameworks. It first examines two major perspectives in legal thought on the compatibility of Islamic principles with constitutional values. The first viewpoint, represented by scholars like Kamali and Quraishi-Landes, argues that Islam inherently supports principles like democracy, rule of law, and the separation of powers. The second perspective, advocated by El-Fadl, Hamoudi, and Emon, highlights fundamental differences, suggesting that Islamic law is often incompatible with Western constitutionalism. The article suggests that perspectives on Islamic and Western constitutional compatibility may oversimplify the unique philosophical foundations of Islamic governance and under the danger of anachronism. In contrast, a more nuanced approach highlights the deep-seated tensions between pre-modern Islamic concepts and modern constitutional frameworks, which are illustrated in the Iranian case. The article then analyses Iran as a case study, focusing on the 1979 Islamic Revolution and the Iranian Constitution. Through an in-depth examination of the “velayat-e faqih” (guardianship of the jurists) concept, it explores the interplay between Islamic doctrine and state governance. Ultimately, the article suggests that Islamic governance in Iran has transformed from a religious doctrine into a form of modern political ideology, where Sharia functions more as a state tool than a constitutional foundation. It has also been addressed that the concept of ‘Velayat-e Faqih’, central to Iran’s constitutional system, itself emerged as a divergence from classical Shiite doctrine.

Keywords:

Islamic Constitutionalism, Velayat-e faqih, Sharia and Constitution, Iranian Constitution, The Rule of Law.

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Öz:

Bu makale, İslami anayasacılığın teorik ve pratik boyutlarını inceleyerek, modern devlet yapıları içinde uygulanabilirliğini sorgulamaktadır. İlk olarak, İslam ve Batı hukuk düşüncesinde İslami ilkelerin anayasal değerlerle uyumuna dair iki ana yaklaşımı ele alır. Kamali ve Quraishi-Landes gibi isimlerin temsil ettiği ilk görüş, İslam'ın demokrasi, hukukun üstünlüğü ve güçler ayrılığı gibi ilkeleri doğasında barındırdığını savunur. El-Fadl, Hamoudi ve Emon'un savunduğu ikinci görüş ise İslami hukukun Batı anayasacılığı ile genellikle uyumsuz olduğunu ileri sürer. Makale, İslami ve Batı anayasal uyumluluğuna ilişkin bakış açılarının İslami yönetimin farklılaşan felsefi temellerini aşırı basitleştirebileceğini ve anakronizm tehlikesi altında olduğunu öne sürüyor. Buna karşılık, daha nüanslı bir yaklaşım, İran örneğinde gösterildiği gibi, modern öncesi İslami kavramlar ile modern anayasal çerçeveler arasındaki köklü gerilimleri vurguluyor. Makale, ardından 1979 İran İslam Devrimi ve İran Anayasası üzerinde durarak İran'ı bir vaka çalışması olarak analiz eder. "Velayet-i Fakih" kavramını derinlemesine inceleyerek, İslami öğreti ile devlet yönetimi arasındaki etkileşimi ortaya koyar. Sonuç olarak, makale İran'da İslami yönetimin dini bir doktrinden çok yani Şeriatın anayasal bir temel olmaktan ziyade, modern devletin bir aracı haline geldiği modern bir politik ideolojiye dönüştüğünü öne sürmektedir. Bu hususta İran anayasal sisteminin merkezinde bulunan 'Velayet-i Fakih' düşüncesinin kendisinin bizatihi klasik Şii doktrininden bir farklılaşma olarak ortaya çıktığı da ele alınmıştır.

Anahtar Kelimeler:

İslami Anayasacılık, Velayet-i Fakih, Şeriat ve Anayasa, İran Anayasası, Hukukun Üstünlüğü.

INTRODUCTION

In 1876, the Ottoman Empire introduced its first constitution, known as 'Kanun-i Esasi' (the Fundamental Law), modelled after the constitutions of Belgium and France. Despite being a Muslim-majority empire governed by a caliph, the Ottomans adopted the Western concept of a constitution, initiating a pivotal shift in governance that would later influence other Muslim-majority nations, including Iran, which enacted its first constitution in 1906. This adoption of Western constitutional structures within an Islamic context raised critical questions and stirred extensive debate: Why did the Ottomans, and later other Muslim nations, turn to a framework seemingly foreign to Islamic governance traditions? Were the values embodied in constitutionalism compatible with the principles and moral foundations of Islamic tradition, which had its own deeply rooted legal and ethical systems? Scholars have long debated these questions, and they remain points of contention today. This essay seeks to address foundational inquiries, such as whether Islam possesses inherent principles sufficient to support a constitutional framework and whether a constitution can, in essence, be characterized as Islamic. Furthermore, it examines the case of Iranian constitutionalism through the lens of Islamic legal theory to explore the compatibility between traditional Sharia law and the structure of the Iranian state.

Western constitutional thought is grounded in a distinct historical and philosophical background, shaped by the influences of Greek philosophy, Roman law, and Judeo-Christian theology¹. Central to this tradition is the notion of ‘fundamental law’, a cornerstone of constitutional thought. Theories such as the social contract are products of specific political and social environments, evolving in response to the unique circumstances of Western societies. Similarly, Islamic legal theory has developed within its own historical and contextual landscape, marked by distinctive features and methodologies. For instance, Islamic law is characterized as a ‘jurist law’-a system where codified rules are largely absent, and jurists’ decisions, made through ‘ijtihād’, play a pivotal role in interpreting and applying the law in accordance with the evolving contexts of time and place². As Western powers established dominance over much of the world, they exported not only their political systems but also their legal frameworks, including concepts of constitutionalism. This influence prompted responses from Muslim societies, particularly those, like the Ottoman Empire, that sought to engage with Western advancements while preserving their Islamic heritage. In contemporary discourse, constitutionalism offers a structured framework for examining the interactions, distinctions, and overlaps between Western and Islamic legal traditions, particularly as they manifest in efforts toward modernization in nations such as Iran, and Egypt³.

This essay is divided into two main sections. The first section explores the concept of ‘Islamic constitutionalism’ through the perspectives of Islamic and Western legal theory, focusing on the views of scholars from different approaches within the literature. The second section presents Iranian constitutionalism as a case study, examining the developments following the 1979 Islamic Revolution and the establishment of the Islamic Republic’s constitution. The essay concludes that the secular structure of the modern state poses challenges to merging Islamic principles, suggesting that in Iran, Islamic governance has transformed from a religious doctrine into a form of modern political ideology, where Sharia functions less as a constitutional foundation and more as a tool of the state.

¹ BERMAN, Harold, **Law and Revolution**, Harvard University Press, 1983, p. 5.

² HALLAQ, Wael, **An Introduction to Islamic Law**, Cambridge University Press, 2009, p. 8.

³ TIBI, Bassam, “The Return of the Sacred to Politics as a Constitutional Law the Case of the Shari’atization of Politics in Islamic Civilization”, **Theoria**, 2008, p. 91-119, p. 106.

I. ISLAMIC CONSTITUTIONALISM IN THEORY: A BRIEF OVERVIEW

Western values have significantly permeated many regions, including the Muslim-majority countries of the Middle East. In response, Muslim scholars have explored the extent to which these values align with their own traditional beliefs. Constitutionalism provides a productive framework for analysing these interactions, where constitutionalism may be understood as the imposition of limitations on government power, adherence to the rule of law, and the safeguarding of fundamental rights⁴. In this chapter, I examine key theoretical issues regarding Islamic constitutionalism as explored by contemporary scholars.

Contemporary Muslim scholarship on constitutionalism presents two main perspectives. The first, represented by figures like Kamali⁵, Hibri⁶, and Qurai-shi⁷ posits that Islam and Sharia law are fundamentally compatible with Western constitutional concepts. The second, championed by scholars like El-Fadl⁸ and Zubaida⁹, questions this compatibility, arguing that Islamic and Western traditions have distinct foundations. In this chapter, I examine scholars from both perspectives to explore their conceptual innovations and challenges, while also clarifying my own position within this contested topic.

Proponents of the first perspective argue that foundational values of modern constitutionalism, such as the separation of powers, democratic governance, and the rule of law, can also be found within Sharia law. Kamali, for example, views the *Dustur al-Madinah* (Charter of Madinah) as an early constitutional document and notes that principles of consultative governance and civilian authority within Islamic governance reflect limited government principles¹⁰. He acknowledges the differences between Islamic and Western constitutionalism,

⁴ MARTIN, Vanessa, "Trends in the Shi'i Response to Constitutionalist Ideology in Iran", *Journal of the Royal Asiatic Society*, 1992, p. 347-361, p. 347.

⁵ KAMALI, Mohammed Hashim, "Constitutionalism in Islamic Countries: A Contemporary Perspective of Islamic Law", *Constitutionalism in Islamic Countries*, Ed. Rainer Grote and Tilmann J Roder, Oxford University Press, 2012, p. 19-35.

⁶ AL-HIBRI, Azizay, "Islamic Constitutionalism and the Concept of Democracy", *Case W. Res. Journal of International Law*, 1992, p. 1-27.

⁷ QURAIISHI-LANDES, Asifa, "Islamic Constitutionalism: Not Secular, Not Theocratic, Not Impossible", *Rutgers Journal of Law and Religion*, 2015, p. 553-579.

⁸ EL-FADL, Khaled Abou, "The Centrality of Shari'ah to Government and Constitutionalism in Islam", *Constitutionalism in Islamic Countries*, Ed. Rainer Grote and Tilmann J. Roder, Oxford University Press, 2012, p. 35-63.

⁹ ZUBAIDA, Sami, *Law and Power in the Islamic World*, IB Tauris, 2003.

¹⁰ KAMALI, p. 20.

recognizing that Western constitutionalism is rooted in Enlightenment secularism, which separates religion from politics. He argues that secularism in this context signifies “the independence of ‘secular’ truth from metaphysical truth,” and suggests that Islam’s acceptance of scientific truth, coupled with its emphasis on morality and transcendent faith, complements rather than contradicts rational inquiry¹¹. Consequently, Kamali concludes that scientific inquiry and faith are mutually enriching within Islamic thought and can coexist harmoniously. Kamali further contends that Islamic principles such as representative governance, equality, and the rule of law inherently oppose arbitrary rule and dictatorship. He aligns the Islamic concept of *maslaha* (public good) with the democratic ideal and equates the principle of *shura* (consultation) with democratic practices, demonstrating Islam’s alignment with constitutional principles¹².

In a similar vein, Asifa Quraishi-Landes argues that Islamic governance traditionally supports legal pluralism, in contrast to the European model of legal monism, where a single legal framework governs all¹³. The coexistence of *siyasa* (ruler-made law) and *fiqh* (scholarly interpretation of sharia) provides flexibility and diversity within Islamic governance, accommodating various schools of thought. Quraishi-Landes emphasizes that sharia, which encompasses both *siyasa* and *fiqh*, represents a rule of law system rather than a rigid legal code.

According to Quraishi-Landes, Islamic constitutionalism rests on three pillars, each reflecting principles similar to those found in modern constitutionalism. The first pillar, *maslaha* (public interest), enables the government to act in the public’s best interest, supporting democratic governance within an Islamic constitutional framework. The second pillar, *fiqh*, exists as an autonomous realm, allowing for diverse interpretations without imposing them on the entire populace, thereby balancing individual choice with state law. The third pillar is *maqasid al-sharia* (objectives of sharia), which guides the legitimacy of state actions, ensuring they align with Islam’s higher objectives, such as preserving life, intellect, and property¹⁴.

In contrast, the second perspective challenges the presumed compatibility between Islamic and Western legal traditions. Khaled Abou El-Fadl contends

¹¹ KAMALI, p. 21.

¹² KAMALI, p. 23-25.

¹³ QURAIISHI-LANDES, p. 559.

¹⁴ QURAIISHI-LANDES, p. 564-575.

that constitutionalism evolved from unique historical practices that cannot be transplanted across cultures without significant adaptation, cautioning against the anachronistic application of Western constitutional norms to Islamic contexts¹⁵. While El-Fadl acknowledges that the principle of government constrained by law is present within Islamic tradition, he clarifies that this does not imply the rule of law in its Western sense, which necessitates that government is bound not only by legal standards but also by institutional frameworks and procedural norms. Thus, El-Fadl concludes that Islamic governance aligns more closely with the notion of “rule by law” rather than the comprehensive “rule of law.”

El-Fadl critiques some modern Muslim scholars for attempting to align Islamic principles with constitutionalism by assembling concepts like *shura* in a “laundry list” fashion, then claiming Islam’s inherent compatibility with constitutionalism¹⁶. For El-Fadl, such arguments reflect a modern intellectual anxiety to reconcile Islamic heritage with contemporary ideals, often bypassing the distinct foundations of Islamic thought. He argues that since constitutional practices are anchored in specific cultural and intellectual traditions, it is a fallacy to assert that Islamic principles can directly equate to constitutionalism, particularly when *shura* has traditionally been advisory rather than compulsory in governance¹⁷.

To gain a nuanced understanding of the relationship between Islamic and Western legal traditions, one must begin with the foundational structures and concepts within each system. For example, the concept of a state that claims exclusive legal authority was a distinctly European innovation and unfamiliar to the Islamic world, which never conceptualized the state as a sovereign entity with inherent rights¹⁸. Similarly, notions of individual rights and the dynamics between individual and community in Western thought do not align seamlessly with Islamic tradition. In Islam, all concepts, including rights, are understood as aspects of divine will. Sharia, encompassing general legal and moral principles, methodological frameworks for deriving law, and specific rulings (*ahkam*), serves as a holistic system that governs all aspects of life¹⁹. However, contempo-

¹⁵ EL-FADL, p. 54.

¹⁶ EL-FADL, p. 38.

¹⁷ EL-FADL, p. 53.

¹⁸ EL-FADL, p. 44-50.

¹⁹ EL-FADL, p. 42.

rary interpretations often reduce Sharia to a set of positive rules, overlooking its broader ethical dimensions. This reductionism has impacted debates on Islamic constitutionalism, limiting the scope of comparison with Western traditions.

El-Fadl delves deeper into the intricate comparisons between Islamic and Western legal traditions, particularly examining two key concepts from Western constitutionalism: the “original condition” and the “social contract.” He suggests that in Islamic thought, human beings are viewed as inherently vulnerable and in need of cooperation to establish justice. Humans are united in their pursuit of justice through divine guidance, analogous to the “original condition” in Western theory, where a shared pursuit of justice underpins constitutional structures. Additionally, while Western social contract theory envisions a binding agreement between rulers and the ruled, Islamic governance includes a comparable but less formalized contract, where the ruler, or caliph, pledges to uphold Islamic values through *bay’ah* (oath of allegiance) with the *ahl al-hall wa al-aqd* (those qualified to select a leader)²⁰. However, this contract lacks the detailed contractual terms seen in Western sources.

Aligned with El-Fadl’s perspective, Haider Ala Hamoudi highlights the inconsistency in implementing sharia within contemporary Muslim states. While some aspects of sharia are enforced, especially in personal status law, many areas (such as commercial law) are governed by transplanted Western legal codes²¹. This selective adoption challenges the coherence of an Islamic legal identity. In this respect, many Muslim countries include constitutional clauses preventing legislation that contradicts sharia, yet these clauses are rarely enforced across all legal domains. Instead, they often serve as a symbolic nod to sharia without substantial impact on areas like corporate or criminal law.

Furthermore, for Hamoudi, the codification of sharia, as seen historically with the Ottoman ‘Mecelle’ and later with hybrid codes like the Egyptian Civil Code, often involves incorporating Western legal structures²². This codification alters sharia’s original juristic plurality, aligning it more closely with Western legal monism, where state law governs all. Even Islamist regimes, including Iran, exhibit selective codification. Although Iran’s post-revolutionary state asserted the importance of sharia, it continues to apply Western-influenced laws

²⁰ EL-FADL, p. 46.

²¹ HAMOUDI, Haider Ala, “The death of Islamic law”, *Georgia Journal of International and Comparative Law*, V. 38 (2), 2010, p. 294-337, p. 307.

²² HAMOUDI, p. 306.

in commercial and public sectors, reserving strict adherence to sharia in family law. This inconsistency highlights the complex negotiation between sharia as divine law and pragmatic state governance. Hamoudi argues that even staunchly Islamic governments often adopt Western legal frameworks, which indicates an inherent tension in asserting Islamic supremacy while borrowing from secular legal traditions²³.

Emphasizing the distinctions between pre-modern and modern states, Anver M. Emon argues that incorporating pre-modern sharia rules into modern state constitutions often creates tension with contemporary human rights norms, especially in regard to religious freedom²⁴. Emon suggests that these rules, once suited to a pre-modern Islamic empire, lack coherence when retrofitted into a modern nation-state framework that interacts with international norms and values of equality. Emon advocates for a historicist approach to Islamic jurisprudence to contextualize sharia rules and their applicability within modern governance. Such an approach acknowledges the historical context of Islamic law, offering a pathway to reinterpret these rules in a way that aligns with the present-day values of constitutionalism and human rights²⁵.

In critique of the first perspective, represented by Kamali and Quraishi-Landes, I find that their arguments tend to overly simplify the compatibility between Islamic and Western constitutional frameworks. Kamali's interpretation of the Charter of Madinah as a constitutional document and his emphasis on parallels between Islamic principles, such as *maslaha* and *shura*, with democratic ideals, risks overlooking the distinct philosophical and cultural foundations that underlie Islamic governance. Similarly, Quraishi-Landes' framework of Islamic constitutionalism, grounded in *siyasa* and *fiqh* pluralism, assumes a level of alignment with modern legal pluralism that may not fully account for the complexities of Islamic law's integration within a modern nation-state. While both scholars provide valuable insights into Islamic governance, their models appear to harmonize Islamic principles with Western constructs in ways that may oversimplify deep-seated differences. Also, this perspective faces the risk of anachronism by retrofitting modern concepts onto historical Islamic jurisprudence. This issue, often termed "anachronism," is prevalent among mod-

²³ HAMOUDI, p. 337.

²⁴ EMON, Anver M., "The Limits of Constitutionalism in the Muslim World: History and Identity in Islamic Law", *NYU Research Paper*, 2008, p. 1-37, p. 4.

²⁵ EMON, p. 5-10.

ern scholars who interpret Sharia through a contemporary lens without fully considering its original context and historical nuances.

Conversely, I find the perspectives of El-Fadl, Hamoudi, and Emon to resonate more closely with my own stance. El-Fadl's critique of modern scholars' "laundry list" approach to aligning Islam with constitutionalism, Hamoudi's emphasis on the selective application of sharia in contemporary states, and Emon's historicist approach to contextualizing sharia's relevance to modern governance all provide a nuanced framework for understanding Islamic constitutionalism. These scholars acknowledge the inherent tensions between pre-modern Islamic concepts and the modern constitutional framework, especially in areas such as human rights and legal pluralism. My subsequent chapter on Iran's constitutional model will build on these insights, illustrating the practical implications of these theoretical challenges within a modern state structure.

II. ISLAMIC CONSTITUTIONALISM IN PRACTICE: CASE OF ISLAMIC REPUBLIC OF IRAN

The demand for Sharia has surfaced from a variety of groups, each shaped by unique circumstances and complexities involving elements such as identity claims, social class conflicts, responses to Western influence and colonial histories, or reactions to authoritarian leaders. Additionally, each group has pursued its goals through distinct approaches: while some, like Al-Qaeda, have adopted violent means, others, such as the Muslim Brotherhood, have opted to engage through political and social channels. Examining the motivations and underlying factors driving the call for Sharia, the Islamic Republic of Iran offers a valuable framework for analysis.

In this chapter, I examine the historical context surrounding the Islamic Revolution to understand the ideological forces that motivated Khomeini and the clergy to establish an Islamic government, as well as the social conditions that enabled the formation of the Islamic Republic. Following this, I analyse Khomeini's ideological perspectives, the Revolution itself, and the resulting Constitution.

Religious scholars, known as ulama, have consistently held influential positions in Iranian society, deriving their power not from the state but from their standing within religious institutions and among local elite groups²⁶. Unlike

²⁶ ZUBAIDA, p. 4.

organized systems such as the Christian Church, Iranian religious institutions remain decentralized. The ulama wield significant influence through their control over educational institutions, or madrasas, and their authority to exercise independent reasoning, or *ijtihad*, on social and legal matters. This interpretative authority provides them with flexibility, allowing them to adapt Islamic principles to evolving social conditions. This adaptability is notably evident in key historical moments, such as the Constitutional Revolution of 1906 and the Islamic Revolution of 1979, where the ulama played a pivotal role in steering political change²⁷.

The ulama first realized their influential power during the Tobacco Régie of 1881²⁸. The Shah's decision to grant exclusive tobacco trade rights to the Imperial Tobacco Company had devastating effects on local growers and merchants. In response, the most senior mujtahid, Mirza Hassan Shirazi, issued a fatwa prohibiting tobacco consumption, leading to a widespread boycott that ultimately forced the Shah to cancel the monopoly. This event marked a significant moment, showcasing the ulama's capacity to mobilize popular resistance. They continued to play a crucial role in Iran's transformation, particularly during pivotal events like the 1906 Constitutional Revolution and the 1979 Islamic Revolution. Additionally, the ulama maintained strong ties with the merchant class in the bazaar, a relationship that provided essential social support and funding, especially during the 1979 Revolution²⁹.

As the first constitutional revolution unfolded, Shi'ite religious leaders entered political discussions regarding the compatibility of Sharia with constitutional governance. Sheikh Fazl Allah Nuri (d. 1909), a prominent mujtahid, represented a strong opposition to constitutionalism. Nuri argued that Islam had divine law as the sole valid law, leaving no room for legislation or secular legislative bodies³⁰. According to him, the ulama were the only legitimate guardians and interpreters of this divine law. Nuri expressed deep reservations about aspects of the constitution, such as freedom of expression, equality between Muslims and non-Muslims, and compulsory education for girls, viewing them as incompatible with Sharia principles. This perspective set a precedent for religious opposition to constitutional elements like the rule of law, legislative pro-

²⁷ ZUBAIDA, p. 2.

²⁸ ZUBAIDA, p. 185.

²⁹ ZUBAIDA, p. 185.

³⁰ ZUBAIDA, p. 186.

cesses, and democracy. Khomeini himself was influenced by Nuri's ideas, admiring him as a principled jurist³¹.

In contrast, Mirza Mohammed Hossain Na'ini (d. 1936) provided the most comprehensive Shi'ite defence of constitutionalism in his work, *Tanbih al-umma wa tanzih al-milla*. Na'ini argued that replacing a despotic regime with a constitutional one was essential, as despotism usurped both the authority of God and that of the Hidden Imam, ultimately oppressing the people³². Though Na'ini regarded constitutionalism as the "lesser evil," he did not see it as ideal; rather, he considered it a pragmatic alternative to tyranny. He proposed that, if the constitutional ruler acknowledged the custodial role of the ulama as deputies of the Hidden Imam, there would be no usurpation of divine authority. Na'ini thus represents a form of "Sharia constitutionalism," though he held that the true ideal was an Imam Sharia government. In its absence, constitutionalism, though imperfect, was preferable to absolute despotism³³.

The Iranian Constitution of 1906-07 embodied a compromise between Western principles of constitutionalism, influenced by the Belgian Constitution of 1831, and the ulama's demand to preserve Sharia as a central element of governance³⁴. This balance reflected the complex interplay between imported constitutional ideals and indigenous religious traditions. The Qajar dynasty came to an end in 1924, and Reza Khan sought to establish a republic modelled after the secular Turkish Republic under Atatürk³⁵. Reza Khan's vision for Iran included secular reforms that clashed with the ulama's religious authority and independence.

One distinct feature of Iranian Shi'ism is its institutional autonomy³⁶. Unlike in other Muslim-majority countries, the mujtahids in Iran maintained financial independence, drawing support from followers not only within Iran but also in Iraq, India, and Lebanon. The ulama's close alliance with the merchant class in the bazaars provided additional influence, posing a continual challenge to the Pahlavi dynasty's efforts to subordinate religious authority. This alliance between the ulama and the bazaars eventually became a central force in the 1979 Islamic Revolution³⁷.

³¹ ZUBAIDA, p. 186.

³² ZUBAIDA, p. 186.

³³ ZUBAIDA, p. 186.

³⁴ ARJOMAND, Said Amir, *Constitutional Politics in the Middle East*, Hart Publishing, 2009, p. 25.

³⁵ ZUBAIDA, p. 187.

³⁶ ZUBAIDA, p. 188.

³⁷ ZUBAIDA, p. 189.

In 1941, Reza Shah was succeeded by his son, Mohammed Reza Shah, who introduced limited intellectual, economic, and political reforms, including the formation of trade unions and political parties³⁸. However, the Shah's rule faced a significant challenge in 1953, when the CIA orchestrated a coup d'état against Prime Minister Mohammad Mosaddegh, whose government had moved to nationalize Iran's oil industry. This event restored the Shah's power but also reinvigorated constitutionalist sentiment among the ulama, particularly figures like Ayatullah Mahmud Taliqani (d. 1979), who promoted constitutional ideas and supported liberal approaches to governance³⁹.

Post-coup, religious discourse became increasingly prominent in Iranian politics. Ayatollah Ruhollah Khomeini (1902-89) emerged as a pivotal figure, shaping the political landscape through his writings and teachings, which emphasized opposition to secularism and the pro-Western policies of the Shah. In *Kashf al-Asrar*, Khomeini argued for an Islamic government rooted in both Sharia law and ulama authority, dismissing constitutionalism as foreign and un-Islamic⁴⁰. His strong criticisms of the Shah's regime led to his arrest by the Shah's security forces in 1962, which elevated Khomeini to the status of a national hero. His close ties with bazaar-based religious groups further solidified his influence, establishing a foundation for the 1979 Revolution and the politics of the subsequent Islamic Republic⁴¹.

Throughout the Pahlavi era, various opposition groups emerged, particularly after the 1953 coup⁴². However, secular opposition was largely disorganized and lacked strong leadership, while the clergy, under Khomeini, had the advantage of institutional structure, hierarchical order, and cohesive leadership. These organizational advantages enabled the clergy to mobilize supporters effectively and ultimately facilitated their central role in the revolution⁴³.

The core principle of the Iranian Revolution, *velayat-e faqih* (Guardianship of the Jurist), was fundamentally Khomeini's own ideological contribution. This concept drew on the belief that Prophet Muhammad had established governance

³⁸ ZUBAIDA, p. 188.

³⁹ MARTIN, p. 352-353.

⁴⁰ MARTIN, p. 351.

⁴¹ ZUBAIDA, p. 185.

⁴² BAYAT, Asef, "Revolution without Movement, Movement without Revolution: Comparing Islamic Activism in Iran and Egypt", *Comparative Studies in Society and History*, 1998, p. 136-169, p. 143.

⁴³ BAYAT, p. 137.

based on Sharia, or divine law, a system that Khomeini argued transcends all temporal and spatial limitations, asserting its applicability universally and perpetually. According to his doctrine, the authority to interpret and implement divine law initially belonged to the Prophet and the twelve Imams. Following the occultation of the twelfth Imam, this interpretive authority passed to the qualified jurist, or faqih, regarded as the “shield of Islam”⁴⁴. Although the faqih lacks the infallibility attributed to the Imam, his deep knowledge of the law and interpretive skill empowers him to serve a similar role, drawing upon the foundational texts and traditions of both the Prophet and the Imams⁴⁵.

Distinct from his predecessors, Khomeini’s ideology starkly opposed Western institutions and legal norms, although some scholars have framed his approach as a form of modern populism rather than strict fundamentalism⁴⁶. The concept of velayat-e faqih is inherently tied to the framework of the nation-state, where the ummah (Muslim community) is reimaged as a nation bound by citizenship, central to shaping political life and even driving revolutionary change. Khomeini integrated “the people” into his doctrine as allies of the clergy in defending Islam, adopting the modern notions of revolution and republic while distancing from traditional Shi’ite theology. Historically, Shi’ism held that authority would remain dormant until the return of the Hidden Imam, with adherents practicing taqiyya-dissimulation under oppressive regimes. Khomeini diverged from this position, urging active resistance to anarchy and tyranny. He redefined taqiyya as a means for personal safety, irrelevant once Islam attained power, referring to a statement from the sixth Imam, Jafar al-Sadiq⁴⁷.

In essence, Khomeini’s slogan of “Islamic government” (hokumat-e esлами) became the defining rallying cry of his revolutionary movement, positioning Islam as the state’s guiding ideology. Under his leadership, the Iranian ulama were the first to successfully mobilize a revolutionary movement. Consequently, the Iranian Constitution became a complex ideological document, situating Sharia as the constitution’s foundation and the state’s defining feature rather than its restraint⁴⁸.

⁴⁴ CUDSI, Alexander and DESSOUKI, Hilla, **Islam and Power**, Routledge, 2013, p. 83.

⁴⁵ ZUBAIDA, Sami, **Islam, the People and the State**, IB Tauris, 2009, p. 17.

⁴⁶ CUDSI AND DESSOUKI, p. 84.

⁴⁷ CUDSI AND DESSOUKI, p. 85.

⁴⁸ SCHIRAZI, Asghar, **The Constitution of Iran**, IB Tauris, 2007, p. 10.

The Constitution of the Islamic Republic of Iran, a direct outcome of the revolution, embodies a broad spectrum of political forces, reflecting the diverse revolutionary coalition. These forces, many of whom had different goals, contributed to a constitution rife with contradictions, offering a microcosm of theoretical dilemmas in Islamic constitutionalism. Schirazi categorizes these contradictions into two main groups. The first is between Islamic legalist elements and secular elements: the government is structured on Shi'a law, ruled by faqih, relying on divine sources for solutions, yet the constitution incorporates secular principles. The second contradiction lies in the dual claims to sovereignty—sovereignty of the people versus divine sovereignty, exercised by Islamic jurists. This juxtaposition of democratic and anti-democratic elements illustrates the profound tension within the constitutional framework and invites further examination of these intertwined aspects⁴⁹.

The Iranian Constitution embeds Islamic legal principles prominently, particularly in Articles 2 and 4, which emphasize the foundational role of Shi'ite doctrines. Article 2 asserts core Islamic tenets: “There is only one God who, by right, is ruler and lawgiver, and humanity must submit to His command,” and proclaims that “the Imamate will lead and be pivotal in advancing the Islamic revolution”⁵⁰. Article 4 further operationalizes these principles, stipulating that “all laws and regulations must align with Islamic criteria. This principle applies universally to all articles of the Constitution and other laws, with the Guardian Council jurists acting as judges in this matter.” This article thus mandates that all state institutions align their functions with Sharia as interpreted within Shi'ite Islam (referenced explicitly in Article 72). Accordingly, all rights enshrined in the Constitution are prefaced by the requirement that they remain consistent with Islamic ideals and law. Additionally, the Constitution envisions the Islamic Republic as a state governed by Islamic jurists (*fuqaha*), exemplified by Article 98, which vests constitutional interpretation in the Guardian Council and constrains legislation within the limits of Sharia as determined by the Council and the Supreme Leader. The role of the Leader is paramount, with Article 57 affirming that “the powers of government in the Islamic Republic are vested in the legislature, judiciary, and executive under the direction of the Supreme Leader of the Muslim community.” The Guardian Council, an influential governmental body, holds veto power over parliamentary decisions, and half of its members are appointed by the Leader. The influence of the Sharia on gov-

⁴⁹ SCHIRAZI, p. 8-12.

⁵⁰ SCHIRAZI, p. 9.

ernance is further solidified by Ayatollah Montazari's assertion that even secular legislative provisions are "Islamic" once ratified by the Guardian Council, thereby institutionalizing Islamic law within the governmental structure⁵¹.

The Constitution also incorporates democratic elements. From its preamble, the document attempts to reflect the collective will of the Iranian people, as evidenced by Section 5, titled "The Sovereignty of the People and the Powers Thereby Conferred." However, this concept meets a theological counterpoint in Article 56, which declares, "Absolute sovereignty over the world and humankind belongs to God," exposing an inherent conceptual tension. Despite this, the Constitution contains references to democratic norms. Article 6 mandates electoral processes for government positions, while Articles 76-83 empower Parliament to investigate and scrutinize national affairs. Additionally, Article 14 stipulates that "all Muslims must treat non-Muslims according to principles of Islamic justice and equity, respecting their human rights," acknowledging, albeit partially, universal rights.

The highest degree of constitutional contradiction arises in its secular components. While the Islamic Republic claims Sharia as the ideal governmental foundation, justifying rule by *fuqaha*, the Constitution is laden with elements derived from secular, Western sources. The concept of a "constitution" (*qanun-e esasi*) itself, along with essential terms like "sovereignty of the people," "nation," "legislature," and "parliament," all have roots in secular traditions. The overall state structure, including the separation of powers into three branches, various councils, and procedural rules, reflects Western secular systems. The secular principles of codified law and judicial adherence to statutory codes remain integral to Iran's legal system, inherited from the Pahlavi dynasty. Following the revolution, the initial implementation of Sharia remained largely symbolic, as seen in restrictions on alcohol and mandatory veiling-measures aimed at visibly distinguishing the new regime from its predecessor. However, much of the Pahlavi-era legislation persisted, and reformers faced challenges in reconciling certain laws, such as labour laws, with Sharia⁵².

In response to these challenges, Khomeini endorsed pragmatic governance, aligning with figures like Rafsanjani to relax Sharia's constraints on state policy through the concept of *maslaha* (interest), a principle commonly employed by Sunni reformers. The establishment of the Council for the Assessment of the

⁵¹ SCHIRAZI, p. 30-31.

⁵² SCHIRAZI, p. 67.

Interest (*maslaha*) on Khomeini's initiative marked a significant development in Iranian governance, allowing greater legislative flexibility. Although the term *maslaha* traditionally aligns with Sunni jurisprudence rather than Shi'ite *fiqh*, Khomeini strategically invoked it to reconcile Sharia with societal needs and streamline government operations, underscoring a more adaptable application of Islamic law⁵³.

CONCLUSION

Iran offers a compelling case study of the complexities involved in applying Sharia within a modern state framework. The Iranian experience illustrates a tension: on one side, the clergy's insistence on incorporating Sharia as a constituent element; on the other, the pervasive influence of modernisation affecting all sectors of society. As discussed in the theoretical section, Western values have permeated numerous societies, including those with Muslim majorities, and Iran has not remained untouched by these forces. In my view, Islam in Iran does not freely express its own conceptual world or unique *Weltanschauung*. Instead, Islam, as wielded in Iranian politics, functions less as a religious system and more as a political ideology, allowing the clergy to exert dominion over other political entities and assert their authority over the populace.

In this context, Islam ceases to function solely as a faith and instead becomes a modern political ideology, marking what can be seen as a profound shift toward secularism. This transformation of Islam from religion to political ideology aligns with the needs of state governance rather than purely divine injunctions. For instance, institutions such as the Guardian Council serve as embodiments of Islam as sanctioned by the state, rather than as custodians of a divine mandate. Consequently, despite the clergy's persistent assertion of Sharia as their guiding principle, post-revolutionary governance in Iran has diverged significantly from Sharia's traditional application, anchoring instead in the prerogatives of state control⁵⁴.

Furthermore, certain scholars have sought to demonstrate compatibility between Islamic and Western legal frameworks, but their approach has often involved recontextualizing Islamic concepts outside of their historical and conceptual origins to fit modern conditions. In the case of the Islamic Republic of Iran, the clergy-under Khomeini's leadership-leveraged Islamic rhetoric and

⁵³ SCHIRAZI, Chapter 12 in general.

⁵⁴ ZUBAIDA, p. 222.

symbols to mobilize support and structure the republic. However, this adaptation of Islamic discourse was fraught with contradictions, frequently detaching key notions from their original context. The central doctrine of the revolution, *velayat-e faqih* (guardianship of the jurist), exemplifies this detachment, as it signifies a substantial departure from Shi'ite tradition and its conceptual underpinnings⁵⁵.

⁵⁵ ZUBAIDA (n. 39), p. 58-59.

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