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The Evolution of Iranian Islamism from the Revolution Through the Contemporary Reformers

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The Evolution of Iranian Islamism from the Revolution Through the Contemporary Reformers

ABSTRACT

This Note explores the evolution and maturation of Iranian Islamism from the revolutionary elites through the contemporary reformers of the 21st century. The Author examines the conflicting ideological influences that are shaping the Islamist movement in Iran. This Note begins by presenting the framework of the fundamental contradictions that underlie Iranian Islamist ideology. The analysis of the Iranian Constitution is divided into an exploration of the institutional role of the clerical elites in the form of the faqih and the Council of Guardians, the constitutionally defined role of women, the democratic elements in the Iranian Constitution, and Marxism and environmentalism in the Constitution. The Note then addresses the maturation of the Iranian Islamist movement including attempts to reinvigorate the power of the conservatives beyond Khomeini, the election to Khatami, the women's rights movement, the philosophy of democratic Islamism, and the clerical backlash against the reform movement.

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I. INTRODUCTION

This Note addresses the legal philosophy of the Islamist movement in Iran. The movement is traced from its rise to power to contemporary fissures in the system, that divide reformers from many clerical elites. One goal of this Note is to determine what internal legal reforms the Islamist movement aims to achieve. This Note centrally argues that Iranian Islamism is trapped within a series of legal paradoxes resulting from the clashing, and not always congealing, elements of democratic values, Platonistic philosophy, and a variety of modernist intellectual movements including environmentalism and Marxist economics, that are all read within the framework of the Islamist interpretation of Islam itself. The discussion explores two possible resolutions of this contradiction. One possibility is that the contradiction will be resolved extremely slowly through unevenly paced progress and struggle toward democratic reform within the context of, and perhaps limited to, the internal law of Iran.¹ A second, starker possibility is the continued tyrannical subjugation of democratic elements of the Islamist movement by absolutist clerical rule.

This Note also strives to answer the question of whether an Islamist State can exist as a democratic state. Iran stands as an example of what Islamist revolutionaries seek to achieve in enacting and enforcing their conception of Islamic law, *sharia*. The course of Iranian political development over the past two decades provides insight into the impact of Islamist rule on a society and the changing nature of the movement itself. The Revolution that swept the Pahlavi dynasty out of power and Khomeini into power stands within the minds of its architects as both an example for Islamist reform, and a platform for spreading further Islamist reform and revolution in the

1. This Note will not explore in depth Iranian foreign policy or the issue the Islamic Republic's involvement with Hamass, Hezbollah, or any other terrorist organization.

Muslim world. Its leaders believe that their revolution is not to be confined to Iran. Quite to the contrary, they believe that it will be exported and imported wherever the *umma*, or religious community of Islam, exists. More than 20 years after the 1979 Revolution, there are two extremely plausible interpretations of the course of the Islamist movement. Perhaps democracy, an element external or internal to Islam, was originally planted in the foundations of Islamism and is emerging, although extremely slowly, as a far more potent element of the Iranian revolution than it had been. Alternatively, corresponding with Samuel Huntington's paradigm of the Clash of Civilizations, democracy cannot survive in an Islamist state. Under this latter interpretation, democracy's appearance on the Iranian political stage is merely transitory, a fleeting moment of hope.

II. THE ISLAMIST REVOLUTION AND RULE IN THE ISLAMIC REPUBLIC OF IRAN

"The Constitution of the Islamic Republic of Iran is full of contradictions which, viewed in their totality, reflect the extraordinary range of political forces involved in the Iranian revolution and the particular constellation of power that existed"² One of the fundamental contradictions of the Iranian Constitution is that the document, which is supposed to serve as the basis for the ideal and pure Islamic State, "incorporates many non-Islamic and non-legalist elements."³ This would not be a contradiction, but for the added complication that Islamist,⁴ Islamic⁵ legalists⁶ "claim that a

2. ASGHAR SCHIRAZI, *THE CONSTITUTION OF IRAN: POLITICS AND THE STATE IN THE ISLAMIC REPUBLIC 1* (John O'Kane trans., 1997). The Iranian Revolution united for a brief period of time a wide array of forces from radical Marxist leftists to conservative clerics in opposition to the Shah and the Pahlavi dynasty. *Id.*

3. *Id.*

4. BOBBY S. SAYYID, *A FUNDAMENTAL FEAR: EUROCENTRISM AND THE EMERGENCE OF ISLAMISM 17* (1997).

[A]n Islamist is someone who places her or his Muslim identity at the center of her or his political practice. That is, Islamists are people who use the language of Islamic metaphors to think through their political destinies, those who see Islam in their political future. This should not be taken to mean that there are no shades of opinion within Islamism, that it is some kind of monolithic edifice without variation or internal differences. Islamists are no more (or less) identical in their beliefs and motives than postmodern bourgeois liberals or socialists or nationalists.

Id. Islamism is, also, a form of political discourse that attempts to center Islam within the political order assuring its growth and vitality. This ordering ranges from a mere subjective preference that people act in accordance with Islamic principles to actual attempts to reconstruct and enforce Islamic principles and ideals.

state set up on the basis of Shi'i law and ruled by Islamic jurists (foqaha) is capable of offering solutions to all problems not only in Iran, but throughout the world" utilizing interpretations of religious texts as the exclusive model for governance.⁷ A "second . . . contradiction [is] between [the Iranian Constitution's] democratic and anti-democratic elements, arising chiefly from conflict between two notions of sovereignty embodied in the document: the sovereignty of the people on the one hand and of the Islamic jurists on the other, a sovereignty that the jurists exercise as God's deputies."⁸ It is basically undisputed, however, that the structure of the Islamic Republic, as framed by the Constitution consisting of both Islamic and Republican elements, was designed to be dominated by the religious jurists acting in accordance with the *sharia*, or Islamic law, rather than conforming with the principles of popular sovereignty.⁹

Asghar Schirazi, a scholar of the Iranian Constitution, postulated the existence of a third contradiction between "those

5. *Id.* at 31-51, 78. Islamism is used a modifier, rather than as interchangeable with the word Islam because the two are not the same. One, Islamism, is essentially a movement directed at political action, legal reform, etc.; the other, Islam, is a religion. Although Islamism is often an attempt to re-articulate Islam as the laws that govern a society, the two are not the same, and not all Muslims are Islamists.

6. SCHIRAZI, *supra* note 2, at 2-3.

The committed hierocratic legalists are defined as those who advocated the mandate of the jurist (*velayat-e faqih*), in particular as understood by Khomeini. They supported the adoption of shari'a as the juridical basis for the state, and held various orthodox positions on the adaption of this system to "the demands of the times."

Id.; see also JOHN L. ESPOSITO, ISLAM: THE STRAIGHT PATH 74-75 (3d ed. 1998). To many Muslims, law is not simply a system of rules codified by legislatures or promulgated by monarchs; rather, in the Islamic world, law possesses not the almost sub-conscious entwinement it has with religion in the West, but a conscious and deliberate connection. In Islam, law is religion and forms identity.

Law is the primary religious science in Islam. Once committed to Islam the believer's overriding concern and question is "What do I do; what is God's will/law." Law is essentially religious, the concrete expression of God's guidance (*sharia*, path or way) for humanity. Throughout history, Islamic law has remained central to Muslim identity and practice, for it constitutes the ideal social blueprint for the "good society." The Sharia has been a source of law and moral guidance, the basis for both law and ethics. Despite vast cultural differences, Islamic law has provided an underlying sense of identity, a common code of behavior, for Muslim societies. As a result, the role of Islamic law in Muslim society has been and continues to be a central issue for the community of believers.

Id.

7. SCHIRAZI, *supra* note 2, at 1.

8. *Id.*

9. Mohsen M. Milani, *Reform and Resistance in the Islamic Republic of Iran*, in IRAN AT THE CROSSROADS 30 (John L. Esposito & R.K. Ramazani eds., 2001).

Islamic legalist elements in the constitution which support a hierarchy and its Islamic anti-hierocratic elements."¹⁰ Nevertheless, Schirazi argued that the anti-hierocratic elements "are based on a conception of Islam which has assimilated significantly greater democratic and secular attitudes, [thus] this contradiction can be seen as corresponding for the most part to the contradiction between the legalist [(more traditional Islamic elements)] and the democratic, secular elements."¹¹ Thus, he contends that the fundamental tension in the Iranian Constitution is the internal elements opposing the external elements.¹² Stated differently, the basic friction is between promulgating law relying exclusively on Islam as defined by the Islamists, and promulgating law that incorporates elements from external sources of law—mainly democratic values and modernist ideologies such as Marxist economic theory and environmentalism—that are frequently contradictory with traditional Islamic law. The external secular and democratic elements and the Islamic legalist components of the Iranian Constitution "have not been adapted to one another in a harmonious way, but appear in one and the same text as elements that contradict and exclude one another."¹³ As an illustration, "[t]he sovereignty of the Islamic jurists negates the sovereignty of the people, the Islamic community is set over against the Iranian nation, Islamic regulations and principles limit the rights of the people, the Guardian Council deprives parliament of power, the leader suppresses the president, [and] the concept of velayat-e faqih reduces the idea of a republic to absurdity."¹⁴

A. *The Constitution of Islamic Republic*

The Iranian Constitution contains numerous and pervasive allusions throughout its preamble and 175 articles to various Islamic elements, which possess several prominent general characteristics.¹⁵ First, the Islamic elements establish that "the state and the revolution leading to the creation of that state are Islamic."¹⁶ Second, "[t]hey define the tasks and the goals of the state in accordance with its Islamic character."¹⁷ Third, "[t]hey bind legislation to the sharia."¹⁸ Fourth, "[t]hey ensure that positions of leadership will be

10. SCHIRAZI, *supra* note 2, at 1.

11. *Id.*

12. *Id.*

13. SCHIRAZI, *supra* note 2, at 19.

14. *Id.*

15. *Id.* at 8.

16. *Id.*

17. *Id.*

18. *Id.* "The literal meaning of Sharia is 'the road to the watering hole,' the clear, right, or straight path to be followed. In Islam, it came to mean the divinely

reserved to Islamic jurists.”¹⁹ Fifth, “[t]hey place Islamically defined restrictions on the democratic rights of individuals, of the nation and of ethnic groups.”²⁰ Sixth, “[t]hey set up institutions whose task it is to ensure the Islamic character of the State.”²¹ These general characteristics are all directed toward one goal: forming an ideal Islamic Republic.²²

The Constitution of Iran explicitly provides that the “form of government of Iran is that of an Islamic Republic.”²³ The Constitution defines an “Islamic Republic [as] a system of government based on belief in”:

- a. the one God (as stated in the Islamic creed “There is no god but God”), *His exclusive possession of sovereignty and the right to legislate*, and the necessity of submission to his commands;
- b. divine revelation and its fundamental role in the expounding of laws;
- c. the return to God in the hereafter, and the constructive role of this belief in man’s ascending progress toward God;
- d. the justice of God in creation and legislation;
- e. continuous leadership and guidance, and its fundamental role in assuring the continuity of the revolution of Islam;
- f. the exalted dignity and value of man, and his freedom, joined to responsibilities, before God;

which secures equity, justice, political, economic, social and cultural independence, and national solidarity, by recourse to:

- a. continuous *ijtihad*²⁴ of the *fuqaha* possessing the necessary qualifications, exercised on the basis of the Book of God and the Sunna of the Masumin, upon all of whom be peace;
- b. recourse to arts and sciences and the most advanced results of human experience, together with the effort to carry them still farther forward;
- c. rejection of all forms of oppression, both the infliction and endurance of it, and of dominance, both its imposition and acceptance.²⁵

Many of the goals delineated in the Iranian Constitution are explicitly Islamic. “Among its goals are: the foundation of ‘an exemplary society’ with the assistance of ‘Islamic ideals,’ ‘the

mandated path, the straight path of Islam, that Muslims were to follow, God’s will or law.” ESPOSITO, *supra* note 6, at 78.

19. SCHIRAZI, *supra* note 2, at 8.

20. *Id.*

21. *Id.*

22. *Id.*

23. IRAN CONST. art. 1, reprinted in CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN (Hamid Algar trans., 1980).

24. ESPOSITO, *supra* note 6, at 83. *Ijtihad* is interpretation by jurists of Islamic law relating to questions about the meaning of Quranic text and traditions.

25. IRAN CONST. art. 2.

realization of the movement's religious principles,' 'the achievement of prerequisite' on the basis of which man will be formed with the help of 'lofty and universal Islamic values.'"²⁶ In a bow to its precursors, such as the Muslim Brotherhood, the Iranian Revolutionaries wrote into the Constitution that the realization of these goals "is not merely . . . for the Iranian people but for Muslims throughout the world, and all those in the world who have been deprived of their rights (*mostaz'afin*)."²⁷ In fulfilling this duty to the *umma*, or religious community of Muslims, "what is to be striven for is 'smoothing the way to establishing a single world-wide religious community.'"²⁸

26. SCHIRAZI, *supra* note 2, at 9-10.

27. SCHIRAZI, *supra* note 2, at 10. See also SYDNEY NETTLETON FISHER & WILLIAM OCHSENWALD, *THE MIDDLE EAST: A HISTORY* 540-42 (5th ed. 1997). The Muslim Brotherhood was founded in 1929 by Hasan al-Banna, a young teacher, who lived in the Suez Canal Zone. *Id.*

[T]he Muslim Brotherhood grew under the founder's fiery oratory and positive approach to a personal and social religion. He exhorted his followers to return to the Islam of the prophet Muhammad, which meant an acceptance of the Quran as the basic law of society. He desired to make Egypt, as well as other Muslim lands, an Islamic theocracy and to stop the trend toward a secular state. But the true strength of the Muslim Brotherhood lay not so much in its ideology as in the energy, devotion, and ruthlessness of its leaders.

In its early years the Muslim Brotherhood maintained an active program of social welfare and agricultural cooperatives; in its later years it became more militant. Its goal became the remaking of society into a manifestation of Hasan al-Banna's uncompromising concept of early Islamic life. . . . Reprisals, pressure, assassination, and armed gangs gave the Muslim Brotherhood power, and its actions attracted youth yearning for an active course to follow.

The secular Egyptian government found the Muslim Brotherhood a serious threat and took measures against it, leading to the assassination of the prime minister in 1948. When Hasan al-Banna was murdered, the government took no serious steps to identify his assailants. In 1951 permission was given to reactivate the Brotherhood on the condition that its semi-military activities be discontinued.

Id.

28. *Id.* (citing Quran verse 21:92, "This is your community. It is the only community. And I am your Lord. Serve Me!"). Cf. BASSAM TIBI, *THE CHALLENGE OF FUNDAMENTALISM: POLITICAL ISLAM AND THE NEW WORLD DISORDER* 48 (1998). Bassam Tibi asserts that many ". . . Arab fundamentalists not only have denied the 'Islamic Revolution' in Iran (a non-Arab country) a legitimate claim to lead the *umma*/universal Islamic community but are also applying their neo-absolutism to Islamic civilization itself." *Id.* The neo-absolutism Tibi refers to is the contention that Arab scholars and states should define Islam throughout the worldwide Muslim community. *See id.* at 46-50.

1. *Velayat-e Faqih* (Rule by the Jurist) or the *Foqaha* and the Council of Guardians

“But now we approach the most important business in the city, the task of guardians.”²⁹ The *faqih* or *foqaha* and the Council of Guardians are a merger of Platonistic philosophy and Islamist ideology, and are charged with the responsibility of creating and preserving an ideal Islamic state.³⁰ The special role of religious leaders, Khomeini’s Guardians of the Republic, in directing, guiding, and preserving the state is the centerpiece of Khomeini’s writings.³¹ In his political discourses on the ideal Islamic state, Khomeini argued that “there should be no separation between religion and government in an Islamic state.”³² In establishing a theocratic state, Khomeini contended that the clergy provided the only legitimate guardians of the Republic, standing as heirs to the mantle of leadership passed from the Prophet Mohammed through the *imams*.³³ According to

29. PLATO, *THE REPUBLIC* § 374d (Richard W. Sterling and William C. Scott trans., 1985).

30. Sanusi L. Sanusi, *Jihad: Revolutionary Islam and Nigerian Democracy*, Niger Delta Congress, at <http://www.nigerdeltacongress.com/jarticles/jihad.htm> (last visited Nov. 6, 2002).

Khomeini’s Islamic Republic, which vests absolute power in the infallible Juris-Consult is not different from Plato’s Republic ruled absolutely by the Philosopher-King, or even from the Catholic State run by the infallible Pope. [Ayatollah] Mutahhari’s general theory of the dictatorship of the Ulema expresses the same suspicion of the capacity of the “masses” to know what is right for them that Plato’s teacher, the “Great Master” Socrates, had expressed about the democracy of Sparta, and mirrors the latter’s preference for a dictatorship of philosophers.

The Philosopher, the Pope and the Faqih are all human beings presumed to have acquired knowledge of the ideal society[,] who are entrusted with the responsibility of moving their people towards its by force, if necessary. The Philosopher King is selected by other philosophers, the Faqih by the Ulema or Council of Guardians, the Pope by the [College] of Cardinals.

Id.; Daniel H. Frank, *Journal of Islamic Philosophy*, Political Philosophy in Classical Islam (1998), available at <http://www.muslimphilosophy.com/rep/HO12.htm>. Frank argues that “what we find in the Islamic political philosophers are variations on standard Platonic themes, pre-eminently the notion of the prophet as an analogue to the Platonic philosopher-king, the ambiguous role of philosophy in the practical political sphere, and the deep division between an elite and the vulgar masses.” *Id.*

31. Neil Shevlin, Note, *Velayat-e Faqih in the Constitution of Iran: The Implementation of Theocracy*, 1 U. PA. J. CONST. L. 358, 365 (1998) (indicating that *Velayat-e Faqih* “codified . . . [Khomeini’s] view of the relationship between Islam and the state. . . [The] work[,] . . . a compendium of lectures delivered by Khomeini to his students in the city of Najaf, Iraq in 1969”).

32. *Id.* (citing HOMA OMID, *ISLAM AND THE POST-REVOLUTIONARY STATE OF IRAN* 62 (1994)).

33. *Id.* (citing OMID, *supra* note 32 at 5). “In Shii Islam[, the term *imam*] refers to the successor of Prophet Muhammad, descendant of Ali, who governs as [a] divinely

Khomeini, "the imam . . . designated the *foqaha* [(elite religious justices)] . . . to exercise the functions of both government and judgeship."³⁴ In this position of power, religious leaders were not to create new law; rather, they were simply to engage in a search to maintain or discover the true law, or *sharia*, spoken by God to the Prophet Mohammed.³⁵ Therefore, "Islamic government differed from secular forms [of government] in that 'the power of legislation is confined to God . . . and nobody else has the right to legislate.'"³⁶

Under Khomeini's vision of the Islamic state, the government is to be "led either by a single member of the clergy, *faqih* [(a philosopher king)], or by a group of clergy, *foqaha* (a small group of guardians)."³⁷ Whether there is to be one supreme ruler or a small group of ruling elites is determined by the answer to the philosophical and pragmatic question of whether the "competence for this task is confined to one person."³⁸ If there is someone who is capable, "then this would be his duty to do so corporeally, otherwise the duty is shared equally."³⁹ Two absolute essentials for the ruler or rulers are that he or they must be knowledgeable about Islamic law, *sharia*, and possess an acumen for justice.⁴⁰

Khomeini's understanding of the powers that should be granted to such a ruler was quite expansive. He indicated that such a ruler "will have as much control over running the people's administration, welfare and policy as the Prophet."⁴¹ Khomeini's vision of the *faqih* is of a paternalistic relationship between the ruler and his people with "the task of a trustee over an entire people . . . not [being] different from that of the trustee over minors, except quantitatively."⁴² In other words, it is not that the ruler has any less responsibility or control over the citizens of the State than a parent over a minor child; rather, the ruler simply has many more children.

inspired religio[us]/political leader of [the] Islamic community." ESPOSITO, *supra* note 6, at 250.

34. *Id.* (citing OMID, *supra* note 32, at 60).

35. *Id.* at 366.

36. *Id.* (citing AYATOLLAH RUHOLLAH KHOMEINI, *ISLAMIC GOVERNMENT* 17 (Joint Publication Research Service trans., 1979)).

37. *Id.* (citing Said Saffari, *The Legitimation of the Clergy's Right to Rule in the Iranian Constitution of 1979*, BRIT. J. OF MIDDLE E. STUD., 1993, at 67 (describing the institutionalization of Khomeini's teachings, *Velayat e- Faqih*, as the law of Iran in the 1979 Constitution)).

38. *Id.* (citing KHOMEINI, *supra* note 36, at 22).

39. *Id.* (citing KHOMEINI, *supra* note 36, at 22).

40. *Id.* (citing KHOMEINI, *supra* note 36, at 19, 20, 35).

41. *Id.* (citing KHOMEINI, *supra* note 36, at 21-22).

42. *Id.* (citing KHOMEINI, *supra* note 36, at 21-22). Khomeini believed that this paternalistic government is necessary because of his view that "the people are, generally, 'devout, simple-minded and intellectually docile.'" *Id.* (citing OMID, *supra* note 32, at 63).

Despite the theoretical importance of the *faqih* to Khomeini, the draft of the new Iranian Constitution prepared by the Provisional Government—part of the dual system of Government formed after the Revolution, composed primarily of secular liberals⁴³—did not contain any reference to the position or institution of the *faqih* or the *foqaha*.⁴⁴ Furthermore, the Council of Guardians, although charged under this proposed Constitution with passing on the Islamic correctness of laws promulgated by the legislature, nevertheless possessed only limited veto powers, and most of its members were to be lay judges, not Islamic clerical jurists.⁴⁵ The Revolutionary Council⁴⁶ and Khomeini originally approved of this draft of the Constitution, providing that the provisions allowing women to hold the position of president or a judgeship were removed.⁴⁷ Protest, however, arose from conservative elements of the religious clerics, *ulama*, regarding the role of religious leaders after Khomeini and the concentration of power in democratic rather than religious based institutions.⁴⁸ These arguments ultimately convinced Khomeini that the original Constitution was insufficiently Islamic.⁴⁹ Hence, a call was issued for redrafting the proposed Constitution and restructuring the model for the proposed government.⁵⁰ The Islamic Republican Party (IRP) won most of the seats in the elected Assembly of Experts that was to redraft the Constitution.⁵¹ With this victory, the IRP

43. *Id.* at 367 (citing NIKKIE R. KEDDIE, INTRODUCTION TO THE IRANIAN REVOLUTION & THE ISLAMIC REPUBLIC 11 (Nikkie R. Keddi & Eric Hoogland eds., 1986)).

44. *Id.* at 367-68 (citing SHAUL BAKHASH, THE REIGN OF THE AYATOLLAHS: IRAN AND THE ISLAMIC REVOLUTION 74 (1984)).

45. *Id.*

46. *Id.* The Revolutionary Council was the religious element of the dual system government that controlled Iran following the 1979 revolution. It was considered to be more influential, powerful, and conservative than the Provisional Government. *See id.*

47. *Id.* (citing OMID, *supra* note 32, at 66 (suggesting that Khomeini supported the Constitution, despite its omission of any reference to the *faqih*, because he felt that the position of *faqih* would “emerge as a matter of course” and that people of Iran would, nevertheless, “obey his every command”)).

48. *Id.* at 368. (citing Saffari, *supra* note 36, at 67); *see also id.* (citing OMID, *supra* note 32, at 66).

49. *Id.* (citing Saffari, *supra* note 36, at 67); *see also id.* (citing OMID, *supra* note 32, at 66). “Khomeini reacted by ‘publicly criticizing the draft constitution for being insufficiently Islamic.’” His supporters came to his aid by ‘stressing the requirement of adhering to the rule by Faqih as the sine qua non,’ of the new Islamic society.” *Id.* (internal citations omitted).

50. *Id.* at 368-69.

51. *Id.* (citing BAKHASH, *supra* note 44, at 81).

During the ensuing campaign for seats in the Assembly of Experts, Khomeini’s Islamic Republican Party (IRP) presented the largest slate of candidates. While its secular opposition “remained fragmented,” and without a “coherent agenda,” the IRP skillfully utilized mosques and successfully publicized the endorsements it had received from the clergy and Ayatollah Khomeini. As a

endeavored to ensure that the Constitution would be "one hundred percent Islamic."⁵²

The results of this endeavor included provisions creating important, but not undisputed, constitutional roles⁵³ for the *faqih* and Counsel of Guardians. Specifically, Article 5 of the Constitution of the Islamic Republic of Iran provides for rule by the *faqih* or alternatively the *foqaha*:

During the Occultation of the Lord of the Age (may God hasten his renewed manifestation!),⁵⁴ the governance and leadership of the

result, the IRP won a landslide victory, securing more than two-thirds of the 73 seats up for election.

Id.

52. *Id.* at 368-69 (citing BAKHASH, *supra* note 44, at 81).

53. *Id.* at 369-70. See also *id.* at 370-71 (citing Saffari, *supra* note 36, at 71). Critics of establishing the position of *faqih* or of granting the *faqih* broad powers offered similar critiques. Ezzatollah Sahabi argued against the establishment of an extremely powerful *faqih* on two grounds. *Id.* at 370. One, the *faqih* should not be involved in day-to-day political activities simply because no one person has a broad enough understanding to perform the role of total day-to-day governance in the modern world. *Id.* The complexity of modern life concern was essentially an expression of the sense of opposition figures such Sahabi and Hojatti Kermani that although Khomeini and future religious leaders would be experts in religious matters that these religious leaders lacked a sufficient understanding of social, economic, and legal matters. *Id.* Two, Sahabi argued against the establishment of the *faqih* on a religious basis, contending that "absolute rule belongs only to God and the infallible Imams; human beings cannot be under the absolute rule of subjection of anyone except them." *Id.*

54. See generally DANIEL BRUMBERG, *REINVENTING KHOMEINI: THE STRUGGLE FOR REFORM IN IRAN* 43-44 (2001).

Although in A.D. 644 Ali [(first cousin and son-in-law of the Prophet Mohammed)] was chosen as Caliph, he later relinquished the title; this act of statesmanship cost him his life at the hands of assassins who accused him of betraying the cause. His son Hoseyn then claimed the Caliphate, but was killed by the Sunni Umayyad Caliph Yazid on the desert of Karbala, in present-day Iraq. In ensuing centuries Twelver Shi'ites asserted that because the ten male descendants of Hoseyn had inherited a divine or supernatural knowledge of the Qur'an, they were the only legitimate leaders, or Imams, of Muslims. Since the Twelfth Imam was said to be in hiding or "occultation," Shi'ites further argued that the creation of a fully legitimate Islamic state had to await his return. In the interim legal scholars, or *mujtaheds*, became the defenders of a persecuted minority at the hands of innately unjust rulers. While these scholars were not viewed as bears of the Imam's infallible authority, their knowledge of the law endowed them with considerable moral and judicial authority in their communities. Thus in contrast with the Imams, the *mujtaheds'* central position in the Shi'ite community was based, first and foremost, on traditional rather than charismatic authority.

Id.; see also CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN 94 (Hamid Algar trans., 1980) (interpreting occultation of the Lord of the Age as "the withdrawal from the manifest plane of the Twelfth Imam in year 260[(Islamic calendar)]/874 [(A.D.)]; he will return to this plane when God wills") [hereinafter Algar]. See JOHN L. ESPOSITO, *THE ISLAMIC THREAT: MYTH OR REALITY* 102 (1995). "Iran's shahs claimed to rule in the

nation devolve upon the just and pious *faqih* who is acquainted with the circumstances of his age; courageous, resourceful, and possessed of administrative ability; and recognized and accepted as leader by the majority of the people. In the event that no *faqih* should be so recognized by the majority, the leader, or the Leadership Council, composed of fuqaha possessing the aforementioned qualifications, will assume these responsibilities in accordance with Article 107.⁵⁵

A section of the Introduction to the Iranian Constitution entitled "Governance of the Just Faqih" explains the need for this position: "[t]he conduct of affairs is to be in the hands of those who are learned concerning God and are trustworthy guardians of that which He has permitted and that which He has forbidden. Such leadership will prevent any deviation by the various organs of government from their essential Islamic duties."⁵⁶

The constitutionally designated powers of the *faqih* or, alternatively, the leadership council⁵⁷ under Article 110, are quite expansive:

The leadership is to be assigned the following duties and powers:

- a. appointment of the fuqaha on the Council of Guardians;
- b. appointment of the supreme judicial authority of the country;
- c. supreme command of the armed forces, exercised in the following manner:
 - (i) appointment and dismissal of the chief of the general staff;
 - (ii) appointment and dismissal of the commander-in-chief of the Corps of Guards of the Islamic Revolution;
 - (iii) the formation of the Supreme National Defense Council, composed of the following seven members
 - the President

absence of the Twelfth Imam, who had disappeared in 874 and whom devout Shia believed would return in a future age to end tyranny and usher in a new age of justice." *Id.*

55. IRAN CONST. art. 5.

56. *Id.* art. 107.

57. See generally *id.* art. 107. Article 107 of the Constitution of the Islamic Republic of Iran provides the process for the selection of the leader or alternatively the leadership council. *Id.*

Whenever one of the fuqaha possessing the qualifications specified in Article 5 of the Constitution is recognized and accepted as marja' and leader by a decisive majority of the people—as has been the case with the exalted marja'-i taqlid and leader of the revolution, Ayatullah al-Uzma Imam Khomeini—he is to exercise governance and all the responsibilities arising therefrom. If such should not be the case, experts elected by the people will review and consult among themselves concerning all persons qualified to act as marja' and leader. If they discern outstanding capacity for leadership in a certain marja', they will present him to the people as their leader; if not, they will appoint either three or five marja's possessing the necessary qualifications for leadership and present them as members of the Leadership Council.

Id.

- the Prime Minister
- the minister of defense
- the chief of the general staff
- the commander-in-chief of the Corps of Guards of the Islamic Revolution

- two advisers appointed by the leader

(iv) appointment of the supreme commanders of the three branches of the armed forces, based upon the recommendation of the Supreme National Defense Council;

(v) the declaration of war and peace, and the mobilization of the armed forces, based on the recommendation of the Supreme National Defense Council;

d. signing the decree [formalizing the election] of the President of the Republic after his election by the people. The suitability of candidates for the presidency of the Republic, with respect to the qualifications specified in the Constitution, must be confirmed before elections take place by the Council of Guardians, and, in the case of the first term, by the leadership;

e. dismissal of the President of the Republic, with due regard for the interests of the country, after the issue of a judgement by the Supreme Court convicting him of failure to fulfill his legal duties, or a vote of the National Consultative Assembly testifying to his political incompetence;

f. pardoning or reducing the sentences of convicts, within the bounds of Islamic criteria, after receiving a recommendation [to that effect] from the Supreme Court.⁵⁸

The Iranian Constitution, however, does provide a mechanism for the removal of members of the leadership council or even an individual that had been selected as the *faqih* by the Assembly of Experts pursuant to Article 111: "Whenever the leader or one member of the Leadership Council becomes incapable of fulfilling the legal duties of leadership, or loses one of the qualifications mentioned in Article 109, he will be dismissed. Determinations [of the necessity of such a dismissal] will be made by the experts mentioned in Article 108."⁵⁹

Additionally, Article 91 of the Constitution of the Islamic Republic of Iran and related provisions create an oversight body that is assigned the responsibility of protecting both Islam as a religion and the Iranian Constitution.⁶⁰ Article 91 provides that "[i]n order to protect the ordinances of Islam and the Constitution by assuring that legislation passed by the National Consultative Assembly does not conflict with them, a council to be known as the Council of Guardians is to be established. . . ."⁶¹ The membership of the Council of Guardians is composed of "six just *fuqaha*, conscious of the current

58. *Id.* art. 110.

59. *Id.* art. 111.

60. *Id.* art. 91.

61. *Id.*

needs and the issues of the day, to be selected by the leader or the Leadership Council; and six jurists, specializing in different areas of law, to be elected by the National Consultative Assembly from among the Muslim jurists presented to it by the Supreme Judicial Council."⁶² Every piece of "legislation passed by the National Consultative Assembly must be sent to the Council of Guardians . . . with a view to ensuring its compatibility with the criteria of Islam and the Constitution. If it finds the legislation not so compatible, it will return it to the Assembly."⁶³ The Council of Guardians is also charged with interpreting the Iranian Constitution,⁶⁴ supervising the election of the President of the Republic and the National Consultative Assembly, and consulting popular opinion and referenda.⁶⁵ When considering the totality of the powers of the *faqih* or *foqaha* and the Council of Guardians, it is apparent that a small group of clerics effectively possess supremacy over the judicial, legislative, and executive powers of government.⁶⁶

2. The Islamically-Defined Status and Role of Women in the Iranian Constitution

This expansive constitutional authority of the ruling clerical elite has enormous effects on the legal rights of Iranians, with women particularly experiencing a prominent and disproportionate impact.⁶⁷

62. *Id.*

63. *Id.* art. 94. The Council of Guardians has ten days to determine if the law meets the standards of Islamic law and adheres to the requirements of the Constitution. *Id.* The Council can ask for an extension if it deems this time period to be insufficient to make the necessary determinations. *Id.* art. 95. When considering whether a piece of legislation meets the necessary Islamic ordinances, a majority vote among the *fuqaha*, the religious cleric members of the Council, is determinative. *Id.* art. 96. When addressing whether a law is constitutionally acceptable, a majority vote among all members of the Council of Guardians, both the *fuqaha* and the lay jurists is necessary. *Id.* art. 95.

64. *Id.* art. 98 (indicating that this constitutional interpretation depends on approval by three-fourths of its members).

65. *Id.* art. 99.

66. JOHN L. ESPOSITO & JOHN O. VOLL, *ISLAM AND DEMOCRACY* 65 (1996) (noting that the Iranian governmental "structure involves a complex balance of authority and popular participation. [Nevertheless,] [a]t the apex of power were the *faqih*, the Supreme Judicial Council, and the Council of Guardians of the Revolution. They controlled the executive, legislative, and judicial branches of government. . . ."). See generally SCHIRAZI, *supra* note 2, at 61-81.

67. Yvonne Yazbeck Haddad, *Islam, Women and Revolution in Twentieth-Century Arab Thought*, in *WOMEN, RELIGION AND SOCIAL CHANGE* 275 (Yvonne Yazbeck Haddad & Ellison Banks Findly eds., 1985). See also SCHIRAZI, *supra* note 2, at 139-42 (explaining some of the limitations on women's rights following the Islamicisation of Iranian society [the Islamist process of utilizing the force of law to reshape society to conform more closely with their understanding of *sharia* or Islamic law] and noting that "[t]he most blatant violations of the right of equality take the form

The role of women in society is viewed by many of the leaders that shaped Iranian law after the Revolution as a critical factor to the development of an ideal Islamic state.⁶⁸ Many of these leaders believe that women's "adherence to the precepts of religion ha[ve] become a precondition for the survival of society. If women cease to be religious or refuse to adhere to the prescriptions of Islam, there can be no Islamic society."⁶⁹ In the cultural struggle envisioned by many Islamists between Islam and the West, women are viewed as the cornerstone and measure of the health and viability of Islamic culture, but not because of Victorian notions of women's greater virtue.⁷⁰ Instead, women are viewed as "the repository of the value system in Islam."⁷¹ The synthesis of this concept of women as the cornerstone of a culture with the belief of many traditionalist Islamist thinkers that women are morally weaker than men⁷² leads many Islamists to view the societal role of women as the principle battleground in their struggle against the West:

Colonialism was fully aware of the sensitive and vital role of woman in the formation of the individual and of human society. They considered her the best tool for subjugation of the nations . . . women serve as the unconscious accomplices of the powers-to-be in the destruction of indigenous culture to the benefit of the imperialists.⁷³

Consequently, "[t]o ensure women's devotion to Islam is therefore the

of legal discrimination against women and members of religious as well as ethnic minorities").

68. Haddad, *supra* note 67, at 275.

69. *Id.* at 293.

70. Compare *id.* at 275 (noting that "women have become the symbol of the transformation of society, thus gaining status as bearers and maintainers of cultural and religious values"), with CAROL BERKIN, *FIRST GENERATIONS: WOMEN IN COLONIAL AMERICA* 202 (1996) (noting the discourse of the U.S. revolutionaries that "the mother, not the masses . . . is the custodian of civic morality"). Although similar in many respects to the Iranian concept of women as the measure of a culture, the American founders view reflected more the concept of women as an ideal model for morality because the American founders viewed women as more virtuous than men. As evidenced by the fact that the founders believed that nature had "named [women] guardians of virtues essential to the republic and socializing agents of the next generation. Women were to embody and to impart to husbands what rhetoric of the day called republican virtues—simplicity, honesty, and willingness to sacrifice for the sake of the nation." Haddad, *supra* note 67, at 200.

71. *Id.* at 293.

72. *Id.* at 297 n.1 (citing ABBAS MAHMUD AL-'AQQAD, *AL-MAR'A FI AL-QUR'AN* 30 (1959) ("Men are the sole source of every accepted definition of good conduct whether for men or for women. Woman has never been a true source of anything to do with ethics or good character even though she brings up the children. The guidelines are provided by the male.")).

73. Afsaneh Najmabadi, *Feminism in an Islamic Republic: "Years of Hardship, Years of Growth"*, in *ISLAM, GENDER, AND SOCIAL CHANGE* 60 (Yvonne Yazbeck Haddad & John L. Esposito eds., 1998).

frontline defense against the disintegration of society."⁷⁴

With the status of women viewed as critical to the survival of Islamic civilization, the role of women became an issue of constitutional import and debate following the Revolution. Furthermore, "[t]he interaction of concepts of the dependency, weakness and vulnerability of the nation as a whole and of its women is a powerful connection of metaphors and stands behind the special attention the Constitution devotes to women."⁷⁵ In a section of the Iranian Constitution entitled "Woman in the Constitution," the traditional role of motherhood is given legal standing under a paradigm of liberating women from the influence of imperialists and expanding women's rights generally:

Woman in the Constitution

In the creation of Islamic social institutions, all elements of humanity that hitherto served the multifaceted foreign exploitation of our country are to regain their true identity and human rights. As a part of this process, it is only natural that women should benefit from a particularly large augmentation of their rights, because of the greater oppression that they suffered under the despotic regime.

The family is the fundamental unit of society and the major center for the growth and advancement of man. Compatibility with respect to belief and ideal is the main consideration in the establishment of a family, for the family provides the primary basis for man's development and growth. It is the duty of Islamic government to provide the necessary facilities for the attainment of this goal. This view of the family unit delivers woman from being regarded as an object or as an instrument in the service of consumerism and exploitation. Not only does woman thereby recover her momentous and precious function of motherhood, rearing alert and active human beings, she also becomes the fellow struggler of man in all the different areas of life. Given the weighty responsibilities that woman thus assumes, she is accorded in Islam great value and nobility.⁷⁶

The role of women in society, however, is not simply limited to philosophical precepts and language in the introduction of Constitution. Quite to the contrary, in Article 21, the Constitution addresses specific constitutional obligations of the Islamic Republic to Iranian women:

The government must assure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals:

- a. create a favorable environment for the growth of woman's personality and the restoration of her rights, tangible and intangible;
- b. the protection of mothers, particularly during pregnancy and childrearing, and the protection of children without guardians;

74. Haddad, *supra* note 67, at 293.

75. William R. Darrow, *Woman's Place and the Place of Women in the Iranian Revolution*, in *WOMEN, RELIGION AND SOCIAL CHANGE* 309, 310 (Yvonne Yazbeck Haddad & Ellison Banks Findly eds., 1985).

76. Algar, *supra* note 54, at 21-22.

- c. the creation of a competent court to protect and preserve the family;
- d. the provision of special insurance for widows and aged and destitute women;
- e. the granting of guardianship of children to mothers whenever suitable in order to protect the interests of the children, in the absence of a legal guardian.⁷⁷

These provisions dictate that women have a special legal status (there is no equivalent section on men); furthermore, women are "implicitly identified as being a profession and envisioned as a separate institution in society like the army and the clergy."⁷⁸ The Constitution's premise that women have suffered more than men under the Shah's regime is based upon the idea that women were "separated from their 'true identities' and . . . made into objects at the service of a Westernized consumerist and exploitative society."⁷⁹

The post-Revolution constitutional status of women resulted in an immediate practical impact on the standing of women in society: women judges were removed from the bench, women were legally barred from studying certain disciplines in higher education, and veiling was no longer a matter of individual choice but instead was enforced by the state.⁸⁰ The Islamist government suspended the Family Protection Act laws of 1967 and 1975.⁸¹ These laws had created a series of courts that had jurisdiction over child custody, divorce, and other family law issues that aimed to assure greater protections for women both in terms of the regularity of the process and underlying substantive rights.⁸² The government established a new set of courts that would deal with disputed divorces.⁸³ In cases that were undisputed, however, a husband could divorce his wife without court oversight or approval as long as two male witnesses were present.⁸⁴ In considering family law issues, the judges, pursuant to directives from the Council of Guardians, were no longer allowed to rely on the Civil Code.⁸⁵ Instead, judgements were to be

77. IRAN CONST. art. 21.

78. Darrow, *supra* note 75, at 309.

79. *Id.*

80. Najmabadi, *supra* note 73, at 61.

81. Darrow, *supra* note 75, at 316 (noting that the Family Protection Acts of 1967 and 1975 altered "some of the most severe legal impediments to women in the areas of marriage and divorce").

82. PARVIN PAIDAR, *WOMEN AND THE POLITICAL PROCESS IN TWENTIETH-CENTURY IRAN* 271 (1995).

83. *Id.* at 272.

84. *Id.* Under this non-dispute registry system, husbands merely need two male witness to sign a register indicating that the man's wife does not dispute the divorce in order for a divorce to be legally granted. *Id.*

85. *Id.* at 273.

based on the *sharia*.⁸⁶ As a result, Kermani, the head of the family law courts, altered the age of consent for marriage from the Civil Code standard, which changed the age from 15 for girls and 18 for boys to the age of 9 for girls and 15 for boys.⁸⁷ Another error in legal interpretation under the Civil Code that the Council of Guardians believed needed to be remedied were the laws regulating polygamy.⁸⁸ The Council of Guardians understood the right of a financially capable man to take an additional wife or wives to be unconstrained by force of law; Civil Code, however, required the first wife's permission to be given in order for the subsequent marriage to be legal.⁸⁹ Nevertheless, the legislation and directives on a variety of similar issues disseminated by various administrators were unclear, thereby causing mounting levels of administrative confusion.⁹⁰ As a result, litigants experienced "inconsistent decisions by judges, lack of clarity in the law, and an absence of legislation to enforce the courts' decisions."⁹¹

In addressing marriage, the Islamic Republic of Iran

focused on . . . marriage as the only legitimate site of sexual pleasure and reproduction. . . . To achieve this, the state adopted a number of strategies: the minimum age of marriage was lowered, restriction on polygamy was removed; financial assistance was offered to newly wed couples, and a campaign was waged on the virtues of marriage and Islamic matrimonial rights.⁹²

The results were often negative for women. The confusing and contradictory foundations for family law in the Republic led to an official compromise that set the age of marriage at 13 for girls; the enforced reality was that younger girls were allowed to marry based on a clerical judge's determination that they were mature enough.⁹³ The result was that girls as young as 10 or 11 were married by clerical judges if they had begun to menstruate.⁹⁴ The suspension of the Family Protection Law also meant that a man could marry up to four permanent wives without needing to obtain consent from his first wife.⁹⁵ Furthermore, the Islamic Republic favored by law the practice of *sigheh*, marriage by contract to last for a set period of time, which was officially disfavored by force of law and socially disdained under the Pahlavi dynasty.⁹⁶ The State, but not society, encouraged

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 275-76.

91. *Id.*

92. *Id.* at 277.

93. *Id.*

94. *Id.*

95. *Id.* at 277-78.

96. *Id.* at 278, 367. *Sigheh* is

a proliferation of the practice of *sigheh* marriages in three different forms.⁹⁷ First, sexual *sigheh* was aimed at relieving sexual impulses, particularly for unmarried men, although married men used this practice as well.⁹⁸ Second, procreational *sigheh* was based on the fact that any child born through this type of relationship was legitimate as a matter of law.⁹⁹ Third, non-sexual *sigheh* was directed at breaking down the segregated living situation in order to protect women traveling from home and to allow unmarried people to get to know each other in a form of dating without the woman's honor being undermined.¹⁰⁰ The State also began a propaganda campaign to encourage marriage that focused both on younger people, encouraging them to wed, and on their parents to encourage them to approve of a potential daughter-in-law or son-in-law.¹⁰¹ The government declared that marriages and reproduction would warrant both financial and heavenly rewards.¹⁰² To further its policy, the State established charities to provide economic incentives for marriage, and required

[u]sed as both [a] name and verb for temporary marriage[s]. It is a practice which is confined to the Shii branch of Islam, in which every man is entitled to have as many *sigheh* wives as he wishes. It is a form of marriage based on a contract, which is bound by a time limit of between one hour to ninety-nine years. Its aim is satisfaction of sexual urges, but children born in *sigheh* marriages are legitimate.

Id. at 366.

97. *Id.* at 278.

. . . The cultural acceptability of *sigheh*, too, remained in question. Despite the official propagation of the philosophy of *sigheh* and its proliferation in practice, it remained socially stigmatized. A well-documented study of *sigheh* demonstrated that the pre-revolutionary attitude of disdain towards *sigheh* resulting from its conceptual association with prostitution persisted in the Islamic Republic. Those who practiced it tended to keep their activities secret and this also applied to the clerics who fervently defended its philosophy. Cultural disapproval of *sigheh* prevented its legitimization

Id. at 285-86.

98. *Id.* It has been reported that

[s]exual *sigheh* was also applied as a means of both repentance and punishment. Prostitutes detained in rehabilitation centers were encouraged to become *sigheh* to revolutionary guards and many did so willingly or unwillingly. In prisons too, virgin women prisoners were forced into *sigheh* with their jailors before being executed, since according to [the State's] religious beliefs they [(the prisoners)] would otherwise go to heaven.

Id. at 278.

99. *Id.*

100. *Id.*

101. *Id.* at 279.

102. *Id.* Women were informed by state propaganda that veterans from the Iran-Iraq War had a special place in heaven, and that the women who married them would share these other-worldly rewards with their husbands. *Id.*

banks to provide special marriage loans.¹⁰³

When addressing the issue of educating women, Khomeini "gave consistent support to women's education . . . telling women '[to] endeavor for knowledge and piety.'"¹⁰⁴ He noted that "[k]nowledge is not the monopoly of a particular group but belongs to all and it is the duty of all men and women to acquire knowledge. I hope the authorities will assist you in this and provide educational and cultural facilities that you need to enable you to succeed."¹⁰⁵

The educational institutions for women and men had to be thoroughly Islamicized, however, before attendance could be allowed.¹⁰⁶ The task of structurally conforming the educational

103. *Id.*

The *Emam's Aid Committee* (Komiteh Emdad Emam) announced that 3 per cent of all household goods produced in the country will be allocated to this committee by the Ministry of Trade exclusively for sale as dowries to couples who were to be married. The Islamic Republic Services Foundation announced that a grant loan of 100,000 to 500,000 rials would be offered to the newly married. The Bank of Mellat, too, offered a special marriage loan to professionals such as teachers.

Id.

104. *Id.* at 312-13.

105. *Id.* at 313.

106. *Id.* at 313-14.

. . . The Islamic Republic devised a "cultural revolution" to overcome the differentiation between secular and religious education by bringing the mainstream education system under Islamic control. The other purpose served by the cultural revolution was to bring the universities, which had become major centers of left-wing political activity during and after the Revolution, under state control. The cultural revolution started in April 1980 when Ayatollah Khomeini criticized the universities for their Westernized professors, students and text-books. He expressed a fear of the Islamic Republic being undermined by "Westernized universities and the training of our youth in the interest of the West or East." The Council of the Revolution decided to close down the universities in order to eradicate un-Islamic influences. This resulted in bloody clashes on university campuses between hezbollahis and other students. Three days of fighting over the control of the universities led to the death and injury of hundreds of students and the evacuation of anti-government secular and Islamic political groups from the universities. President Banisadr proclaimed the start of a cultural revolution to Islamize the higher education system. Universities remained closed for two years while the High Council of Cultural Revolution, consisting of seven members mostly from the IRP, Islamized the education system. . . .

The Islamisation of the education system consisted of a number of measures applied to various levels of education. To begin with, the education establishment was coerced into total submission to Islamic ideology. Teachers, lecturers and administrators either agreed to carry the banner of Islamisation or faced dismissal. Islamic student associations played an important role in keeping the pressure on the staff and students of educational institutions.

After the reopening of the universities in 1982, the criteria for admission of students included ideological commitment to the Islamic Republic, and . . .

system to the Islamist's movement's view of public sphere gender segregation was assigned to the Ministry of Education.¹⁰⁷ It abolished coeducational schools, banned gender-integrated classes in private schools, and enforced gender segregation in universities.¹⁰⁸ Although the rhetoric and intentions of the ruling elite seemed to reflect a genuine desire to assure access to quality education for both men and women, the administration of the law reflected an enormous gender disparity.¹⁰⁹ Economic stagnation, when combined with teacher shortages, meant that insufficient funds and instructors were available to provide education to men and women separately.¹¹⁰ The State's response was not to integrate classes and schools. Instead, many girls, particularly in rural areas, were dismissed from schools entirely, while girls in urban areas were forced into overcrowded and under-supplied institutions.¹¹¹

Furthermore, the State required wearing the *hejab*, or modest Islamic dress including a head-cover and sometimes a veil, that conformed to official government modesty standards for girls over the age of nine.¹¹² Schools that permitted violations were subject to prosecution and closure.¹¹³ Also, teachers and administrators at girls' schools were subject to immediate dismissal for failure to wear the *hejab*.¹¹⁴ Women sympathetic to the regime were encouraged by the State's propaganda machine to keep close oversight over the appearance of the students and the content of the classroom teaching in girls' schools, in order to ensure that it was appropriately Islamic.¹¹⁵

Segregation in education did not stop with being taught in separate physical locations; rather, the content of the education varied between what was provided to men and women.¹¹⁶ A

confirmation by the local mosque was required. Secondly, curricula changes were introduced which included more religious instruction, mandatory teaching of Arabic in secondary schools, dropping of English at primary school level and the teaching of a heavily biased history of Islam and the Islamic Revolution. In short, a large dose of Islamic ideology was injected into school and university curricula. Thirdly, in addition to the ideological content of education, the Islamic structure of the educational system was of great interest to the Islamic state.

Id.

107. *Id.* at 315.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 316.

conference committee assigned to making recommendations on education noted that “[o]ne of the contrasts between the Islamic and Western schooling system is that the latter trains boys and girls in the same way, but the Islamic system is conscious of male-female differences while considering them equal in creation.”¹¹⁷ The committee’s report included recommending different curricula and textbooks for boys and girls.¹¹⁸ The Ministry of Education established technical schools for girls in rural areas to teach carpet weaving and beekeeping, activities considered by the State to be gender appropriate while still offering a good income.¹¹⁹ Girls were also taught childcare, health, hygiene, and dressmaking.¹²⁰ Job fair training taught boys subjects that focused on technology, industry, artisan crafts, and trade; training for girls was focused on service-oriented occupations.¹²¹ The difficulty and confusion that the Ministry of Education experienced in deciding what occupations were to be deemed gender appropriate for women can be seen in their refusal to encourage girls to pursue secretarial careers, made because of the Ministry’s fear that women would merely be thought of as sex objects in these roles.¹²² Although the Islamic Republic confronted enormous difficulties in this process, there were also successes, including increasing the literacy rate among women between 1976 and 1986 from 55.1% among urban women to 65.2%, and from 16.5% to 36% among rural and nomadic women.¹²³

As for higher education, women were allowed to enter universities; however, the subject areas that women could study were circumscribed, with 54% of available subjects being closed to women.¹²⁴ For example, women were barred from all technical, engineering, and experimental sciences, while men were barred from only three areas of study in total: midwifery, family hygiene, and sewing.¹²⁵ Also, some areas that women were allowed to enter, such as medical, environmental, and human sciences, held quotas of 20% to 50%, limiting the number of women that could enter these fields.¹²⁶ In order to study abroad, women were required to be married, needed the permission of their husband, and their husband had to stay with them while abroad; male students did not have any of the same restrictions.¹²⁷ Higher education was available to women, but their

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* at 316-17.

123. *Id.* at 317.

124. *Id.* at 319.

125. *Id.*

126. *Id.* t

127. *Id.* at 320.

options were limited by the State's determination of what is gender-appropriate work for women.

The intersection of the constitutional role of women in the Islamic Republic and employment law emerged as an arena of conflicting pressures created by divergent ideological, political, and economic forces.¹²⁸ Following the Revolution, some of the earliest employment law reforms were aimed at segregating women in the public sphere, including prohibitions on women serving as judges and a requirement to wear the *hejab* in the workplace.¹²⁹ In 1987, the Labor Law was amended to include a series of clauses with which the State aimed to address issues of women's health and safety in the Islamic Republic.¹³⁰ Specifically, Article 75 prohibited women employees from carrying heavy weights or undertaking dangerous work.¹³¹ Article 76 prohibited women from taking night shifts, excepting educational, health and medical work.¹³² Article 77 mandated maternity leave in all employment that was to be 90 days, half of which was to be taken after the birth of the child.¹³³ Article 79 required employers to give a mother one-half hour leave every three hours to feed her baby, and to provide appropriate nurseries for pre-school children despite the regime's condemnations of the Pahlavi dynasty's implementation of a similar program.¹³⁴

Although the State preferred to exclude women from the public sphere of employment in favor of domestic childcare, the Islamic Republic's policy of gender segregation necessitated the presence of women in the workplace.¹³⁵ A major determinant of women being permitted to continue to work and study was that in a segregated society "there was a dire need for more women teachers, doctors, nurses, midwives, social workers and so on."¹³⁶ Simply stated, if Ali Sharati¹³⁷ and Khomeini's vision of an effective functioning Islamic

128. *Id.* at 324-25. The State was interested in maintaining male supremacy and upholding the importance of rearing children; both of which they viewed as being threatened by the Western understanding of gender equity. *See id.* at 322-23. On economic front, the Islamic Republic confronted severe economic difficulties caused by decreased foreign trade and a sluggish domestic economy that complicated determinations on the role of women in the workplace. *See id.* at 323. Iran, however, also confronted the reality that its young men were fighting a War with Iraq that was cutting many lives short and as such reducing the available labor supply just when the War effort needed these workers the most. *Id.* at 324.

129. *Id.* at 325-26.

130. *Id.* at 327.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 322-25.

136. *Id.* at 324-25.

137. Darrow, *supra* note 75, at 310, 311-12, 314, 316. (noting that Sharati was "the leading radical religious ideologue of the Iranian Revolution"). Darrow indicates

gender segregated society was to be realized, then; for example, there would have to be female doctors to treat female patients.

3. Democratic Elements in the Iranian Constitution

Although the clerical elites effectively dominated Iranian politics, resulting in the implementation of anti-modernist policies such as gender segregation, theocracy was not the only political impulse appearing on the Iranian political stage. Islamic legalists maintain that all governing decisions can be directed through interpretations of religious texts; nevertheless, democratic and a variety of modernist political philosophies appear scattered throughout the Constitution. For example, the framers of the Constitution “made an effort to emphasize that [the Constitution] was an expression of the will; i.e. the ideals, of the Iranian people.”¹³⁸ The Constitution defines the Islamist view of government as one that

does not derive from the interests of a certain class, nor does it serve the domination of an individual or a group. It represents . . . the crystallization of the political ideal of a people who bear a common faith and common outlook, taking an organized form in order to aid the process of intellectual and ideological evolution toward the final goal, i.e., movement toward God.¹³⁹

Although not defining the people “according to the democratic norms of pluralism but rather as a homogenous community of like minded individuals, this view of their will is still in contradiction with the concept of *velayat-e faqih*,” rule by the jurist.¹⁴⁰ Under the *velayat-e faqih* model, “political power emanates from God alone and is transferred from God to the Islamic jurists. It therefore in no way depends upon the voice of the people for its legitimization.”¹⁴¹ This contradiction between the authority of the *faqih* and the rights of the people also arises in Article 56 of the Constitution, providing that

[a]bsolute sovereignty over the world and man belongs to God and it is He Who has placed man in charge of his social destiny. No one can deprive man of this God-given right, nor subordinate it to the interests of a given individual or group. The *people* exercise this God-given right

that Ali Sharati’s philosophy advanced the concept that women “can be an actor in a civil society” and that in “both the family and civil society [women] can be a crucial participant in the revolutionary struggle,” but that because of a perception of women’s “vulnerability to empty fads in a consumerist society,” there is “a need to construct special protections for and walls around [women],” which is the concept that provided the basis for the Islamist gender segregation model of society. *Id.*; see also generally ROY MOTTAHEDEH, *THE MANTLE OF THE PROPHET: RELIGION AND POLITICS IN IRAN* 16, 330-31, 335, 353 (1985); ESPOSITO, *supra* note 6, at 177-79, 194, 199, 211.

138. Algar, *supra* note 54, at 18.

139. *Id.* at 18.

140. SCHIRAZI, *supra* note 2, at 14.

141. *Id.*

by the paths specified in the articles below.¹⁴²

Article 56 specifically indicates that God gave the right to “man [to be] in charge of his social destiny”; this “God given right” is to be “exercised” by “the people,” not by a clerical jurist.¹⁴³

Further reliance on the will of the people for justification of the Islamic Republic appears in Article 1 of the Constitution, which indicates that Islamic Republic is a form of government that “received an affirmative vote from the Iranian people on the basis of their longstanding belief in the Quranic government of truth and justice. . . .”¹⁴⁴ Furthermore, Article 6 recognizes the right of the people to guide the State:

In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by means of elections, including the election of the President of the Republic, the representatives of the National Consultative Assembly, the members of councils, or by means of referenda in matters specified in other articles of this Constitution.¹⁴⁵

Although its power is severely curtailed by the authority of the Council of Guardians and the *faqih*, the elected parliament controls certain levers of influence that render it a reduced, but still important, institution in the government.¹⁴⁶

Although the Constitution guarantees fundamental rights only where they are not contradictory with Islam as interpreted by the Islamists, “the mere fact that the constitution mentions fundamental rights may be seen as a concession to those forces who demanded such rights and had participated in the revolution for the sake of obtaining them.”¹⁴⁷ In a section of the Iranian Constitution entitled “The Rights of the People,” the enumerated rights include, to name a few: equal rights regardless of ethnic group or tribe, color, race, or language; equal enjoyment of protection of the law for men and women; protection of a person’s rights to dignity, life, property, dwelling, and to practice an occupation; a ban on interrogation concerning opinions; a ban on punishment based on belief; a free press; the right to an attorney; presumption of innocence in a court of law for defendants; a ban on torture; and the right of all citizens to

142. IRAN CONST. art. 56 (emphasis added).

143. *Id.*

144. *Id.* art. 1.

145. *Id.* art. 6.

146. SCHIRAZI, *supra* note 2, at 15-16. See also FARIBA ADELKHAH, BEING MODERN IN IRAN 79 (2000) (“In the Islamic Republic, elections are more important than is too often supposed because the Assembly (Majles) is not without power under the 1979 Constitution.”).

147. SCHIRAZI, *supra* note 2, at 17.

access a court of law.¹⁴⁸ The free press provision of the Iranian Constitution is demonstrative of the tensions inherent in these rights between a democratic impulse and the Islamist endeavor to create and maintain a virtuous Islamic society: "Publications and the press are free to present all matters except those that are detrimental to the fundamental principles of Islam and the rights of the public."¹⁴⁹

Although the Iranian Revolution's system of law is based on the concept that

the *shari'a*, because of its relation to the divine source of knowledge and its perfection, is endowed with universality and possesses the vitality to solve all humankind's social and personal problems in every time and place[,] . . . the Constitution [has, nevertheless, imported] important elements which have been borrowed . . . from Western secular sources and stand out as concepts that are alien to the *shari'a*.¹⁵⁰

The concept of a Constitution itself is "first and foremost among these."¹⁵¹ Also, the three branches of government "with corresponding institutions, the division of each of these institutions into different councils, government offices and organizations, the rules regulating relations between these bodies as well as the clauses in the constitution allocating economic rights and the functions to the state, . . . had to be borrowed . . . from foreign models."¹⁵²

4. Marxist Economic Thought and Environmentalism in the Iranian Constitution

The Iranian Revolution not only fundamentally redefined social and political relations, but also dramatically altered the nation's political economy, pushing the country away from the capitalist impulses of the Pahlavi dynasty.¹⁵³ The educational and legal reforms instituted by Muhammad Reza Shah Pahlavi under the White Revolution,¹⁵⁴ a program aimed at modernizing Iran by the

148. IRAN CONST. arts. 19-42.

149. *Id.* art. 24.

150. SCHIRAZI, *supra* note 2, at 17-18.

151. *Id.* at 18.

152. *Id.*

153. MOTTAHEDEH, *supra* note 137, at 331. The capitalist reforms in the Iranian economy under the Pahlavi dynasty resulted in almost dizzying economic growth in the early 1970s. *Id.* The Iranian economy was growing at a rate of approximately ten percent per year, with the income from oil revenues increasing throughout the decade until the revolution from \$1.1 billion in 1970 to \$2.4 billion in 1972 to \$17.4 billion in 1974. *Id.* Even the traditional Iranian open air markets (bizarres) experienced economic advancement during the decade of 1970s. *Id.*

154. Algar, *supra* note 54, at 14-15. The White Revolution is referred to in the Iranian Constitution's Preamble as "the American conspiracy" and "a step intended to strengthen the bases of despotic government and reinforce the political, cultural, and economic dependence of Iran on world imperialism . . ." *Id.* at 14.

21st century,¹⁵⁵ disproportionately benefited an extremely small group of urban elites.¹⁵⁶ The Iranian Revolution brought even more severe shocks to the economy as relations with the United States and Europe became strained, war with Iraq ensued, and the underlying economic theories of governance and laws of property were altered.¹⁵⁷

In the Introduction to the Iranian Constitution entitled "The Economy is a Means, Not an End," the Marxist interventionist economic theory of many of the revolutionary elite¹⁵⁸ is set forth:

In strengthening the foundations of the economy, the fundamental consideration will be satisfying the material needs of man in the course of his overall growth and development. This principle contrasts with other economic systems, where the aim is the concentration and accumulation of wealth and the maximization of profit. In materialist schools of thought, the economy represents an end in itself, so that it comes to be a subversive and corrupting factor in the course of man's development. In Islam, the economy is a means, intended only to contribute to the attainment of the ultimate goal.

The economic program of Islam consists, then, of providing the means needed for the emergence of the various creative capacities of man. It is the duty of the Islamic government to furnish all citizens with equal and suitable opportunities, to provide them with work, and to satisfy their essential needs, so that the course of their progress may be assured.¹⁵⁹

Upon seizing power, the revolutionaries employed their economic and philosophical understanding to fundamentally alter existing property law in Iran: "Laws were passed to control prices and markets; to nationalize many industries, banks, and foreign trade; to expropriate urban land for use by the poor and homeless; and to undertake a

155. JOHN L. ESPOSITO, *ISLAMIC THREAT: MYTH OR REALITY* 101 (1995). See also MOTTAHEDEH, *supra* note 137, at 331.

The Iranian government saw itself in a new light. The government would make Iran the Switzerland or, more exactly, the United States of the Third World, for, once its oil ran out, Iran would have an infrastructure of roads, education, even nuclear power plants that would be unmatched elsewhere in the Third World. Alongside this infrastructure it would have a highly educated, technologically experienced population that would be able to export technology to the Third World more cheaply than Japan or the West. Of the oil-rich countries, only Iran, with a population of about thirty-five million would be both populous enough and rich enough to recreate its future this way.

MOTTAHEDEH, *supra* note 137, at 331.

156. ESPOSITO, *supra* note 155, at 103.

157. Bijan Khajehpour, *Iran's Economy: Twenty Years After the Islamic Revolution*, in *IRAN AT THE CROSSROADS* 94-111 (John L. Esposito & R.K. Ramazani eds., 2001).

158. BRUMBERG, *supra* note 54, at 62, 67-69, 71 (explaining the development of the Islamic left, its influence on the revolution, and how it was influenced by Marxist thought).

159. Algar, *supra* note 54, at 21.

major redistribution of agricultural lands.”¹⁶⁰ The initial “mass nationalization of industries and economic entities, . . . [occurred] under the name of the ‘confiscation of assets of the Royal family and its affiliates,’ but later clearly derived from the revolution’s economic philosophy. . . .”¹⁶¹ The nationalization of industry placed a significant percentage of Iran’s economy directly or via “revolutionary foundations” under State control with estimates ranging from sixty percent to eighty percent of the economy being subject to the direction of clerical elites.¹⁶²

The restructuring of the economy was not haphazard; rather, the revolutionaries’ view of the appropriate economic system is set forth in Chapter IV of the Constitution of the Islamic Republic of Iran.¹⁶³ Article 44 envisions a three-sector economy, with varying levels of State control depending on the size of the enterprise:

The economic system of the Islamic Republic of Iran is to consist of three sectors: state, cooperative, and private, and is to be based on orderly and correct planning.

The state sector is to include all large-scale and major industries, foreign trade, major mineral resources, banking, insurance, energy, dams and large-scale irrigation networks, radio and television, post, telegraphic and telephonic services, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the state.

The cooperative sector is to include cooperative companies and institutions concerned with production and distribution, established in both the cities and countryside, in accordance with Islamic criteria. The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the activities of the state and cooperative sectors. Ownership in each of these sectors is protected by the laws of the Islamic Republic, to the extent permitted by the other articles of this chapter, and on condition that such ownership does not go beyond the bounds of Islamic law, that it contributes to the economic growth and progress of the country, and that it does not harm society. The [precise] scope of each of the three sectors, as well as regulations and conditions governing their operation, will be specified by law.¹⁶⁴

Despite the theoretical existence of three separate sectors, the practical reality is that the Government has acted to limit the private sector to only the smallest economic enterprises.¹⁶⁵ Additionally, the implications of these property laws on capital investors both inside and outside of Iran include fear that the government acting pursuant to Article 44 could seize almost any industrial, manufacturing, agricultural, or commercial enterprise; therefore, capital investors

160. ESPOSITO, *supra* note 155, at 115.

161. Khajehpour, *supra* note 157, at 94.

162. *Id.*

163. IRAN CONST. ch. IV.

164. *Id.* art. 44.

165. Khajehpour, *supra* note 157, at 94.

kept their money out of Iran, retarding the economic development of the nation.¹⁶⁶

Although Iran was a self-sufficient agricultural nation throughout its history, under Reza Shah the country's land laws, which previously allowed for customary grazing on unenclosed agricultural lands, were ended, creating enormous difficulties for small farmers that historically were dependant on this right of land use.¹⁶⁷ The Iranian revolutionaries not only attempted redistribution projects aimed at breaking up the large estates that were responsible for the end of the grazing practices, they also conducted massive seizures of property pursuant to Article 45 of the Constitution:

Public wealth and property, such as uncultivated or abandoned land, minerals, seas, lakes, rivers and other public bodies of water, mountains, valleys, forests, marshland, natural forests, unenclosed pastureland, legacies without heirs, property of undetermined ownership, and public property removed from usurpers, shall be at the disposal of the Islamic government for it to use in accordance with the public interest.¹⁶⁸

The natural world made another significant appearance in the Iranian Constitution in Article 50, which introduced environmentalism into constitutional law by explicitly forbidding development that threatened the environment:

The preservation of the environment in which present and future generations are charged with the construction of a progressive society is regarded as a public duty in the Islamic Republic. Economic and other activities that tend consistently to pollute the environment or inflict irreparable damage on it are therefore forbidden.¹⁶⁹

Environmentalism and state control in what was historically a highly capitalistic society that maintained a complex free-enterprise system are two examples of elements of the Iranian Constitution that are not part of traditional *sharia* that, nevertheless, play a significant role in the Constitution of the Islamic Republic.¹⁷⁰ The various competing and overlapping philosophical foundations that were incorporated into Iran's Constitution helped lay the foundation for the political battleground over the identity and control of the Islamist movement that began to occur as the death of Khomeini became imminent.

166. *Id.* at 94-95, 104-08, 119-20. Article 81 of the Iranian Constitution provides an additional strong disincentive to capital investment in Iran from foreign investors. *Id.* at 95. The Article declares "[t]he granting of concessions to foreign individuals and companies is prohibited." *Id.* at 95.

167. *Id.* at 95.

168. IRAN CONST. art. 45.

169. *Id.* art. 50.

170. *Id.* arts. 44, 45, 50.

B. Contemporary Iran

1. Attempts to Reinvigorate the Power of the Conservatives Beyond Khomeini

In 1989, the Reconsideration Council, composed primarily of Khomeini's supporters, was aware that his health was fading.¹⁷¹ Concerned also about the status of the *faqih* and the succession beyond Khomeini, the Reconsideration Council began to try to strengthen the conservative position and the *faqih* as an institution.¹⁷² The newly-reformed position of *faqih* witnessed an awkward alteration with reduced qualifications and increased powers.¹⁷³ Under Article 109 of the Amended Constitution of 1989, the leader no longer needed to "be a marja (a source of imitation with considerable following who renders independent judgement over a variety of issues) or enjoy the support of the majority" of the people of

171. Shevlin, *supra* note 31, at 378-79 (noting that Khomeini passed away in the summer of 1989).

172. See generally *id.* at 376-77.

The continuity of Government initially appeared to be ensured by the designation of Ayatollah Montazeri as Khomeini's eventual successor. Montazeri[,] . . . a member of the dissident clergy, however, who, like Ayatollah Sahri'atmadari, believed that the Faqih should not be a single all-powerful leader but, rather, one who, "in making important decisions . . . consults with experts and the learned to ensure that his decisions are beneficial to society as a whole and do not incur irreparable damage to the social fabric of Muslim nations." He also charged that the government had been guilty of "injustice [and] denial of people's rights."

Montazeri's criticisms of the regime were seized upon by President Ali Khamenei and Speaker of the House Hashemi Rafsanjani, "both favorite disciples of the Faqih, [who] felt themselves vulnerable should Montazeri come to power." Both realized Montazeri was more learned than they were, and if it was "knowledge of Islamic law that was to determine who was to run the country" both "had much to lose." Both were, therefore, influential in convincing Khomeini to dismiss Montazeri. Even after Montazeri was removed as a threat, however, succession problems remained. According to Article 107 of the constitution, should a suitable candidate not be found to replace Khomeini, a "council of three or five religious leaders would take charge of the leadership." The problem for Khamenei and Rafsanjani was that membership in such a group would consist of the "leading ulama [(religious clerics)] selected on the basis of knowledge and learning, [and] would [therefore] not have included either."

Id. at 375-76. As a result, both men encouraged Khomeini to revise the succession provisions of the Constitution. *Id.* at 376. "There was also a need to clarify the power structure in Iran and delineate the powers of the President. This need, combined with the campaign to revise the criterion for determining a successor, compelled Khomeini to order, on April, 25, 1989, the creation of a twenty member 'Council of Reconsideration to revise the Constitution.'" *Id.*

173. *Id.* at 376; see also IRAN CONST. art. 109 (amended 1989).

Iran.¹⁷⁴ Under the Amended Constitution, the leader still needed to "be well-informed about feqh (Islamic jurisprudence), about socio-political problems, . . . and must be 'just and pious.'"¹⁷⁵ While the reductions in the qualifications necessary to achieve the mantle of leadership were being written into the Constitution, the Reconsideration Council was simultaneously increasing the institutional powers of the *faqih*¹⁷⁶ beyond even what Khomeini possessed under the Constitution.¹⁷⁷ The Supreme Leader was given the authority under Article 110 of the Amended Constitution to set the "general policies of the Islamic Republic" in conjunction with the Council of Determination of the Interests of the Republic.¹⁷⁸ This Council did not function as a limitation on the *faqih's* power because, acting pursuant to Article 112 of the Amended Constitution, the Supreme Leader "will single-handedly determine the composition of this new council."¹⁷⁹ Essentially, under the Amended Constitution of 1989, the only institutional limitation on the *faqih* is that his policies agree with those he selects to be on the Council of Determination.¹⁸⁰ Other new powers granted to the *faqih* are the ability to "order referenda, delegate some of his duties and responsibilities to others, and decide when to revise the Constitution," to dismiss members of the Council of the Guardians, and to reconvene the Reconsideration Council to make any necessary constitutional modifications or revisions.¹⁸¹

Following the death of Khomeini in 1988, Rafsanjani emerged as President, and Khamanei as the *faqih*.¹⁸² Rafsanjani, in opposition to the Islamic left that had called for and achieved the nationalization of important economic outlets after the revolution, instituted a reform

174. IRAN CONST. art. 109 (amended 1989).

175. *Id.* art. 107. See also ESPOSITO, *supra* note 6, at 78.

[B]ecause the Quran does not provide an exhaustive body of laws, the desire to discover and delineate Islamic law in a comprehensive and consistent fashion led to the development of the science of law, or jurisprudence (fiqh [(or feqh)]). Fiqh, "understanding," is that science or discipline that sought to ascertain, interpret, and apply God's will or guidance (Sharia) as found in the Quran to all aspects of life.

Id.

176. Mohsen Milani, *Shi'ism and the State in the Constitution of the Islamic Republic of Iran*, in IRAN: POLITICAL CULTURE IN THE ISLAMIC REPUBLIC 141 (Samih K. Farsoun & Mehrdad Mahsayekhi eds., 1992) (postulating that the lesser religious credentials might undermine the support for the *faqih* in the public, therefore necessitating greater institutional control).

177. *Id.*

178. IRAN CONST. art. 110 (amended 1989).

179. *Id.* art. 112.

180. *Id.* arts. 110, 112.

181. Milani, *supra* note 176, at 151-53.

182. Milani, *supra* note 9, at 32.

program directed at social and economic reform, along with a more moderated foreign policy.¹⁸³ Rafsanjani's program of "economic reconstruction" was directed at reversing the economic agenda of the Islamic left, which had socialized much of the Iranian economy in the years following the revolution.¹⁸⁴ Nevertheless, the reforms instituted by Rafsanjani, a conservative closely tied with the clerical elites, were only a small precursor of the more turbulent political debates that would arise in the 1990s with the increased prominence of Mohammad Khatami.

2. The Election of Khatami

During the 1997 presidential campaign, President Mohammad Khatami¹⁸⁵ challenged the traditionalist leadership and offered a new vision of Islamism:

I have made a covenant with the nation to move with it towards justice They try to say religion and freedom do not mix They are striving to say that security and freedom do not mix and that in order to have security, freedom must be crushed. But the nation will not be fooled.¹⁸⁶

During the campaign, Khatami's "mantra was political development—strengthening civil society, respecting the rule of law, cherishing freedom, and institutionalizing tolerance—all of which, in the convoluted vernacular of revolutionary Iran, meant democracy."¹⁸⁷ As President, Khatami became the personification of the reform movement; his objectives included empowering the people through popular sovereignty and making the Republic "gentler, kinder, and more tolerant and transparent."¹⁸⁸ Consequently, the central argument between conservatives and reformers in the election of 1997 was transformed into a dispute over the role of democracy and

183. *Id.* at 32-33.

184. *Id.*

185. *Id.* at 29-30 (noting that even though Khatami is a reformer, he is considered to be "a committed cleric with impeccable loyalty to the Islamic Republic").

186. *Id.* at 29 (quoting President Mohammad Khatami, in Hamadan, Iran, July 27, 1999).

187. *Id.* at 30.

188. *Id.* It should be noted that this view of Khatami as the champion of the reform movement is not universal. Reza Pahlavi, the son of the deposed Shah and the would-be heir to the throne of the Pahlavi dynasty, holds a different view. REZA PAHLAVI, WINDS OF CHANGE: THE FUTURE OF DEMOCRACY IN IRAN 39-40 (2002). Pahlavi does acknowledge that Khatami's "election was a step in the right direction" and agrees that Khatami is "clearly more liberal than earlier leaders, and [that he] brought more popular voices into what had been a totally closed system." *Id.* Nevertheless, Pahlavi states that Khatami's "changes were only meant to improve the system of clerical rule cosmetically, not revamp the entire clerical order" and that "Mr. Khatami's ultimate goal has always been to preserve the system not to change it." *Id.*

popular sovereignty within the Islamic Republic.¹⁸⁹

Unlike Schirazi, who conceives of democracy as a reality external to the Islamic cosmology,¹⁹⁰ Mohsen Milani, another scholar on Iran, argues that the election “was a debate of Islam against Islam.”¹⁹¹ Milani argues that “[i]n one Islam, popular sovereignty and the *velayat-i faqih* must become compatible and complimentary, and in the other, the *faqih* speaks the last word and limited popular sovereignty can be exercised only within the boundaries he defines.”¹⁹² Further explaining the dichotomy, Milani indicates that “[o]ne Islam attempts to embrace modern ideas; the other is confident that its divine regulations transcend time and space.”¹⁹³ In the 1990s, the transcendence of these regulations was being challenged by a myriad of adversaries including not only Khatami, but also women’s groups.

3. The Women’s Rights Movement

The women’s rights reform movement can be cited as support both for the Milani argument that a democratic impulse can be found in Islam itself, and Schirazi’s contention that the democratic impulse is derived from external factors. Supporting Milani’s democracy as internal to Islam argument, the women’s rights movement’s primary contention is not that Islamic law does not adequately protect or safeguard women’s rights; rather, the argument is that the existing “law and its implementors often fail to give women their due rights” as required by God’s law.¹⁹⁴ This argument utilizes existing interpretive guides that are considered to be “more women-friendly” to argue the point that women actually have greater rights under *sharia* than what is currently being afforded to them by the State.¹⁹⁵ Some reformists, however, are engaging in interpretation of sacred texts themselves, arguing that the door of *ijtihad*, i.e., “independent analysis or interpretation of Islamic law,”¹⁹⁶ should be reopened.¹⁹⁷ This reinterpretation frequently includes the “reformist method of contextualizing and historicizing Quranic verses.”¹⁹⁸

That a number of reformers argue “that such revisions [in the role of women] should be carried out in light of ‘contemporary schools

189. Milani, *supra* note 9, at 30.

190. SCHIRAZI, *supra* note 2, at 1-2.

191. Milani, *supra* note 9, at 30.

192. *Id.*

193. *Id.*

194. PAIDAR, *supra* note 82, at 275.

195. Najmabadi, *supra* note 73, at 65.

196. ESPOSITO, *supra* note 6, at 254.

197. Najmabadi, *supra* note 73, at 65.

198. *Id.* at 69.

of philosophy and thought,” supports Schirazi’s contention.¹⁹⁹ These critiques are largely based on policy arguments regarding the well-being of women as individuals and society in general, and are often based on the writings of Western feminists, particularly more traditional feminist writers such as Virginia Woolf²⁰⁰ and Simone de Beauvoir,²⁰¹ and secular Iranian feminists such as the poet Furugh Farrukhzad.²⁰²

Regardless of whether its influences are internal or external to Islam, the Iranian women’s movement has achieved some success.²⁰³ Critics could argue, however, that its success is mainly limited to the pages of journals.²⁰⁴ Nevertheless, the government allowing publications such as *Zan Ruz* and *Zanan* to present dissenting views such as the highly controversial but, nevertheless, published article “Rehabilitating Eve,” is a mark of considerable progress for women’s rights and free speech in the Islamic Republic.²⁰⁵ Whereas *Zanan* tends to address issues on a more abstract level, *Zan Ruz* focuses on

199. *Id.* at 66.

200. *Id.* at 72, 74. Of her various writings, Virginia Woolf’s text, *A Room of One’s Own*, has been of particular interest to the Iranian feminist movement. *Id.*; see generally VIRGINIA WOOLF, *A ROOM OF ONE’S OWN* (Mary Gordon ed. 1990).

201. See generally SIMONE DE BEAUVOIR, *THE WOMAN DESTROYED* 181-82 (Patrick O’Brian trans. 1969). The concept of a subordinated woman’s self-image being dictated by the view of her male companion, Beauvoir’s heroine states:

When I am with Maurice I cannot prevent myself from feeling I am in front of a judge. He thinks things about me that he does not tell me: it makes my head swim. I used to see myself clearly through his eyes—too flattering a picture, perhaps, but one in which I recognized myself. Now I ask myself, Whom does he see? Does he think me mean-minded, jealous, blabbing and even disloyal because I make inquiries beyond his back?

Id.

202. Najmabadi, *supra* note 73, at 72. Farrukhzad has been described by her critics as

the corrupt poetess, who participated in pleasure seeking parties of the taghuti times (the devilish time of the old regime). Her naked (meaning “immodestly” dressed) pictures were portrayed in the press of those times. Her corrupt and sexual poetry is a condensation of inner collapse, filth, and forbidden thoughts that turn away any chaste and authentic woman.

Id. at 73 (citing Asadallah Badmchaian, *Bidun-i sharh*, *ZANAN*, Aug.-Sept. 1994, at 9. Interestingly, *Zanan* published this critique of Farrukhzad as well as other opinions that run contrary to the thrust of the publication, which is primarily sympathetic with the feminist reform movement. One of Farrukhzad’s most influential and widely-read pieces of poetry, *Another Birth*, written in 1963 shortly before her death in an auto accident, is “a celebration of ‘the birth of a female character who rejoices in her new options, a warrior who has fought for every step in her path to freedom. She becomes her own model and gives birth to a self in the image of her own liking and aspirations. Her rebirth is indeed a self-birth.’” *Id.* at 74 (citing MOHSEN M. MILANI, *VEILS AND WORDS* 135 (1992)).

203. *Id.* at 59-77.

204. *Id.*

205. PAIDAR, *supra* note 82, at 311.

creating a voice for women in the public sphere by presenting women's complaints on issues that are of considerable practical importance, including: violent husbands and other familial hardships, inflation, food shortages, housing shortages, discrimination in the workplace, and issues of children's health and schooling.²⁰⁶

The women's reform movement has experienced gains beyond increased freedom of expression. For example, Clause 1169 of the pre-Revolutionary Civil Code was declared legitimate by the State despite opposition from some religious clerics. As a result, women whose spouses die can receive foster parent status that allows them to raise their children, though they still are not allowed to officially gain custody if another male guardian is available such as a grandfather or uncle.²⁰⁷ In 1989, restrictions on women's entry into study in the fields of geology and agriculture were lifted, entry quotas were abolished in medical, para-medical, and some engineering fields, and quotas for women in some technical and industrial subjects were expanded.²⁰⁸ The changes, however, in some areas have been minuscule. For example, the Islamic Republic continues to sharply curtail the rights of unmarried non-widows, who are viewed as inexplicable persons by the Islamist movement.²⁰⁹ The progress of the women's rights movement in Iran has been slow, but it is developing.

4. The Philosophy of Democratic Islamism

The fundamental dispute, however, between the Islamists in Iran is not over a particular legal issue or policy, even one as important as the societal role of women; rather, the basic dispute among the Islamists is about the nature of law itself. Abdolkarim Soroush,²¹⁰ a leading intellectual of the reform movement and critic

206. *Id.*

207. *Id.* at 297.

208. *Id.* at 320.

209. *Id.* at 297-98, 302.

210. Valla Vakili, *Abdolkarim Soroush and Critical Discourse in Iran*, in *MAKERS OF CONTEMPORARY ISLAM* 150, 150 (John L. Esposito & John O. Voll eds., 2001). Soroush in the late 1980s and early 1990s "emerged . . . as the foremost Iranian intellectual operating within the terms of religious discourse." *Id.* at 150. His political writings on the role of religion in the State "combine a deep knowledge of Islam with a subtle mastery of Persian poetry, creating an individual style that has appealed strongly to many religiously inclined Iranian university students." *Id.* Soroush has been criticized strongly by "the Iranian clergy and from more militant-minded Islamic student groups." *Id.* His ability to converse in "the dominant religious language of political discourse in Iran" and "to move fluently and innovatively within a domain traditionally dominated by an exclusivist clerical establishment has rendered him a more dangerous critic than many of his contemporaries." *Id.* His standing domestically is bolstered by his established credentials from the Revolution including

of the clerical regime since the late 1980s, has presented arguments for reform that have been extremely persuasive to many Iranians.²¹¹ Soroush argues that “religiously derived methods of governance are insufficient for administering a modern state[,] . . . rejects . . . any government that claims legitimacy based on the implementation of some notion of Islamic methods of governance[, and] . . . considers a democratic government the only kind compatible with his notion of Islam [I]t is not only compatible but essential with [his] notion.”²¹²

The break between the reformists and the clerical regime is a split on the nature of law, religion, ideology, and the divine itself. Both sides accept the immutability of religion.²¹³ However, unlike the Islamists of the clerical regime, Soroush, who is also an Islamist theorist, argues that the endeavor of Islamism should not be to reconstruct classical Islam in a new era.²¹⁴ Rather, Soroush asserts that “to meet the challenges of modernity Muslims should seek not to change their religion but rather to reconcile their understanding of religion with changes in the outside world.”²¹⁵ In order to achieve this reconciliation, one must accept the inevitability of changing human understandings of religion.²¹⁶

Theoretically, some clerical scholars might be prepared to accept this notion; however, the application of this concept to reach the conclusion that human religious knowledge is no better, and probably worse, than the understanding of math, science, literature, or any other subject creates an enormous gap between the Islamists of the reform movement and those that compose the clerical regime.²¹⁷ Soroush argues that religious knowledge is only one branch of understanding, and that it “is not divine by virtue of its divine subject

association with Ali Shariati and Murteza Mutaharri and appointment by Ayatollah Khomeini to the Advisory Council of the Cultural Revolution. *Id.*

211. *Id.* at 151.

Soroush proved more capable than other critics at negotiating the ambiguities, uncertainties, and restrictions of [public discourse]. His thorough knowledge of the terms of religious discourse, dominance over the language of poetic subtlety, and sensitivity to linguistic equivocation created an individual flair for criticism within restricted space unmatched by his contemporaries. Soroush could speak the unspeakable without ever actually saying it.

Id.

212. *Id.* at 155.

213. *Id.* at 153.

214. *Id.*

215. *Id.* Soroush views Islam the religion as unchanging. He, however, argues that any attempt to reconstruct a past form of societal understanding of Islam is incapable of achieving success. *Id.* He argues that the human understanding of religion must be changed in order to provide “the key to reconciling a fixed religion with a dynamic world.” *Id.*

216. *Id.*

217. *See generally id.* at 153-54.

matter," which leads to his critique that religious knowledge "should not be confused with religion itself."²¹⁸ The implications of this argument for the interpretations of sacred texts, which in Shiite Islam include the Quran, the *hadiths*, and the teachings of the Shii *imams*, is that these interpretations will vary depending upon the methodology employed and the scholar's cosmology, world-view, which is itself bound by a variety of circumstances including societal background and the historical period.²¹⁹ Soroush, however, does not embrace the relativist assertion that all understandings are equal; to the contrary, he argues that there are better understandings of the truth.²²⁰ The divide that exists between the Islamists allied with Soroush and those tied to the clerical regime is over who should arbitrate between the interpretations. Soroush argues that knowledge is public, and that all new knowledge or developments in thought occur within the context of the entire body of public knowledge.²²¹ Consequently, religious knowledge or scholars' interpretations should be evaluated for correctness by the broader public community, rather than by experts such as the Council of Guardians or even the *faqih*.²²²

Soroush's critique of efforts to mold Islam into a static religious ideology²²³ are of even greater concern when applied to an ideological

218. *Id.*

219. *Id.* at 154; see generally FRIEDRICH NIETZSCHE, *BEYOND GOOD AND EVIL: PRELUDE TO A PHILOSOPHY OF THE FUTURE* § 6 (Marion Faber trans., 1998). Nietzsche states:

Little by little I came to understand what every great philosophy to date has been: the personal confession of its author, a kind of unintended and unwitting memoir; and similarly, that the moral (or immoral) aims in every philosophy constituted the actual seed from which the whole plant invariably grew. Whenever explaining how a philosopher's most far-fetched metaphysical propositions have come about, in fact, one always does well (and wisely) to ask first: "What morality is it (is he) aiming at?" Thus I do not believe that an "instinct for knowledge" is the father of philosophy, but rather that here as elsewhere a different instinct has merely made use of knowledge (and kNOwledge) as its tool. For anyone who scrutinizes the basic human instincts to determine how influential they have been as inspiring spirits (or demons and goblins) will find that all the instincts have practiced philosophy, and that each one of them would like only to well to represent itself as the ultimate aim of existence and as the legitimate master of all other instincts. For every instinct is tyrannical; and as such seeks to philosophize.

Id.

220. Vakili, *supra* note 210, at 154-55.

221. *Id.* at 154.

222. *Id.*

223. *Id.* at 156.

The reason for this rejection lies in the characteristics of ideology and their effect on religion. In situating itself in opposition to a particular rival, and interpreting the world based on rivalry, religious ideology reduces the

government, because it poses an additional threat to the development of the nation, the individual religious experience, and the body of religious knowledge.²²⁴ According to Soroush,

an ideological government must both develop and maintain an official ideological platform that at once legitimizes the government and acts as an unifying and mobilizing force. To accomplish this, the government requires an official class of government-allied ideologues, whose sole task is the formation and defense of the ruling ideology.²²⁵

When the government is ruled through religious ideology, this class of ideologues is composed of government-allied interpreters of religion.²²⁶ Soroush argues that in such a system "religion becomes the servant of the state, as it is transformed into a legitimizing ideological base" that serves as the justification for actions of rulers.²²⁷ This type of state imposes a restrictive ideological understanding that mandates intellectual conformity that, according to the reformist movement, retards the growth of religious knowledge²²⁸ and restricts the continued development of the nation due to the resulting lack of available flexibility in thought, reasoning, and approaches to governance.²²⁹ Soroush and the reformers with

complexity of religion to fixed ideological worldview. According to Soroush, it is impossible to defend one understanding of Islam as definitive. All understandings change over time. But to transform religion into ideology is to cast it in a definitive, unchanging mold. This replaces religion with an ideological version of it, for the performance of religion is now ascribed to the religious ideology.

Id.

224. *Id.* at 155. Soroush's political critiques largely stem from his concern about the current political apparatus in Iran placing significant political and social obstacles in the way of the growth of religious knowledge.

225. *Id.* at 157, 231 n.29. Ali Sharati, one of the most important intellectual thinkers of the Islamist movement, argued for the necessity of an official state ideology; however, Sharati opposed the formation or even unofficial existence of a class of state-sponsored religious interpreters. *Id.* at 156-57. Soroush argues that when read in the context of his broader writings, Ali Sharati would have opposed state-sponsored ideology if he had understood that it would become linked with the formation of the class of religious interpreters that he opposed. *See id.*

226. *Id.* at 157.

227. *Id.*

228. *Id.* Soroush argues that for religious knowledge to expand, it is necessary to have conditions that allow for the acceptance of transformation and evolution in religious understandings. In the type of ideological state created by the Islamic Republic's ruling elite, the freedom necessary to interpret religious texts is restricted. Consequently, "[b]y forcibly imposing an ideological vulgarization of religion upon society, state-allied ideologues do not only reduce individual freedom; they also determine the acceptable standards and use of reason in religious inquiry, as any rationality not based on the logic of the prevailing ideology is deemed unacceptable." *Id.* Soroush contends that unobstructed reasoning is necessary to the growth of religious knowledge like any other field of study, thus the restrictive ideological standards of the regime pose a significant threat to the continuing development of religious knowledge. *Id.*

229. *Id.* (quoting Abdolkarim Soroush).

him under Khatami's banner argue that Islamism as a movement is broad enough to find a solution to the quest for an ideal society through the formation of a religious society instead of an ideological state.²³⁰ The distinction between a religious society and an ideological state is manifested both in the relationships between Islam and religious government, and Islam and democracy, and in the danger to religion and religious scholars presented by the existence of a clerical establishment in government.²³¹

The Reformist movement does not seek the separation of religion and the state; rather, as Soroush writes, the movement concedes that in their concept of a religious society politics inevitably take a religious form.²³² This religious form is created as a result of individuals expressing their religious beliefs in a political system that is responsive to a religious populous.²³³ The accountability of leaders to public opinion results in the formation of a political system that, despite not being derived from the interpretation of religious texts by the elites, is nevertheless the just society sought by the Islamist movement and an embodiment of Islamic religious sentiment.²³⁴ Furthermore, the reformers contend that the clerical elites fail to understand that "we do not draw our conception of justice from religion, but we accept religion because it is just."²³⁵ Khatami and other reformers believe that human rights exist and have a source

In principle the possibility of the internal growth and development of a political system exists only when the that system is flexible, and when the possibility for new reasoning and change exists within the system, . . . and if this does not exist, inevitably for reform, the foundation of the system must be inverted, and upon the inversion, a new foundation built.

Id.

230. Vakili, *supra* note 210, at 157-58. Soroush argues that there are profound differences between an ideological society and a religious society.

In an ideological society, the government ideologizes the society, whereas in religious societies, the society makes the government religious. In an ideological society, an official interpretation of ideology governs, but in a religious society, there are prevailing interpretations but no official interpretations. In an ideological society, the task of the formation of ideology is relegated to the ideologues. In a religious society, however, the issue of religion is too great for it to be relegated solely to the hands of the official interpreters. In a religious society, no personality and no *fatwa* is beyond criticism. And no understanding of religion is considered the final or most complete understanding.

Id. at 157-58 (quoting Abdolkarim Soroush). A *fatwa* is a formal legal opinion or decision of a *mufti* on a matter of Islamic law. ESPOSITO, *supra* note 6, at 253.

231. Vakili, *supra* note 210, at 158-71.

232. *Id.* at 158.

233. *Id.* at 158-65.

234. *Id.* at 158-60.

235. *Id.* at 159.

beyond religious text; they argue these rights are undermined when religious text alone becomes the sole source of human rights.²³⁶ Additionally, they assert that there are no religiously-proscribed methods of governance and that any attempt to uncover these methods through textual analysis is little more than a wasted effort at best, and sophistry at worst.²³⁷ Soroush argues that to rationally administer a state in the modern era, more than religious text is required; thus, modern government should additionally look to social and natural sciences for guidance, with the methods employed not necessarily needing to be derived from religious text in order to avoid violating religious values.²³⁸

The reformists contend that a democratic society based on popular sovereignty not only corresponds with Islamic religious values, but also is necessary to promote the development of a thriving religious society.²³⁹ They argue that the legitimacy of government is derived not from its ruling according to its ideological understanding of Islam; rather, its legitimacy is based on rule that is in correspondence with the will of the public—including the people's sense of religion.²⁴⁰ Khatami addressed this point—an extremely controversial position among elites in the Islamic Republic—in a book published before his run for the presidency.²⁴¹ He argued “that liberal democracy, despite all its shortcomings, is one of the West's greatest achievements, and that its basic tenets must be warmly embraced by all modern societies.”²⁴² In the reformers' religious society, commonly-held public understandings of religion, subject to change over time, provide the boundaries for political action rather than the more static religious ideology of the clerical regime.²⁴³ They contend that democracy encapsulates both values and methods of governance that allow for the rationalization of politics through public accountability promoted via separation of powers, a free and independent press, free elections, freedom of assembly, freedom of expression, permitting the existence of multiple political parties, and limitations on executive power.²⁴⁴

Clerical critics of the reform movement and many Iranian lay religious intellectuals argue that Soroush fails to understand that

236. *Id.* at 159, 163. Soroush “argues that in a democratic state, neither Muslims nor non-Muslims derive their human rights from their faith. For both, these rights are a product of their membership within the larger group of humanity.” *Id.* at 163.

237. *Id.* at 159.

238. *Id.*

239. *Id.* at 164.

240. *Id.* at 161.

241. Milani, *supra* note 9, at 29.

242. *Id.*

243. Vakili, *supra* note 210, at 161.

244. *Id.* at 161.

religion in a democratic state is no longer central; it loses its ascendancy with the public and is relegated to status of an obsolete relic from a bygone era.²⁴⁵ A fundamental split between the Islamist reformers and more conservative Islamists is their division on the role of government institutions and the force of law in maintaining religiosity in a society.²⁴⁶ Soroush contends that government can provide a hospitable environment for religion to grow and prosper, but that no form of government can make either individuals or a society religious. The clerical elites and many lay religious intellectuals instead argue that law can be used to make people religious and that government should use law to that end.²⁴⁷ The clerical elites argue that the reformers' notion of a religious democratic society maintained through the faith of its people, their religious consciousness being brought to bear through public accountability, lacks the institutional foundations necessary to maintain a religious society.²⁴⁸ The clerical elites assert that without the institutions of the *faqih* and the Council of Guardians, and without strict ideological precepts enforced through the law, the people under democratic governance and non-ideological law-making would slip into an undisciplined, immoral, hedonistic, self-interested, and generally irreligious existence.²⁴⁹

245. *Id.* at 162. Hamid Payidar, in countering Soroush's call for democracy, argues that democracy is inseparable from liberalism and secularism, thus incompatible with Islam. He argues that Soroush's notion of equal human rights external to Islam is in violation of Islamic separation and classification of the world into segregated groupings of Muslims and non-Muslims, who are supposed to have different, not the same rights.

246. *Id.* at 163.

247. *Id.* at 164.

248. *Id.* at 164-65.

249. *See id.* 161-68. The clerical elites and lay religious intellectuals draw upon history and philosophy to argue that this type of moral decay is inevitable, particularly frequently appearing in these discussions is Plato's philosophy or Muslim scholars' interpretations that are heavily influenced by Platonistic thought. *Id.*; *see also* PLATO, *supra* note 29, at §§ 560e-562. Discussing the individual produced by a democratic state, Plato states:

Draining and purging the soul of the captured youth, they put him through a series of extravagant and gorgeous initiation rites. Insolence, anarchy, improvidence, and shamelessness are brought back from exile in colorful array with garlands crowning their heads. In their train is a massive chorus praising them: insolence they call good breeding; anarchy is liberty; improvidence is grandeur; shamelessness is courage. Does not something like this happen to the youth when he repudiates the training that limited him to the necessary desires and gives free rein instead to the desires that are useless and unnecessary?

... He yields to each appetite as it makes its presence felt so that it appears to be a matter of random choice. Then he gives himself over to it until he is

Soroush chides his critics for what he perceives as their failure to understand that individuals do not accept religion through force, but only maintain an appearance of religiosity to conform with the law, and that the government is doing little more by strictly enforcing static clerical ideological interpretations upon the public than building up resentment, frustration, impairing the growth of religious knowledge, and eventually ensuring their (the clerics') own demise.²⁵⁰

satisfied. After that, he turns to some other pleasure, rejecting none and treating all as equally enjoyable.

. . . He shakes his head at anyone who tells him that some pleasures are the fruits of good and honorable desires but that others are joined to base affections, so that we should honor and enjoy the former but restrain and subdue the latter. He repeats that one pleasure is as good as another and that all must be accorded equal status.

. . . So he lives his life day by day, indulging each appetite as it makes itself felt. . . . His life lacks all discipline and order, yet he calls it a life of pleasure, freedom, and happiness and is resolved to stay the course.

. . . So this is the democratic man, and we shall pair him with the democratic regime.

PLATO, *supra* note 29, at §§ 560e-562.

250. Vakili, *supra* note 210, at 169-70. One of the more hotly debated intellectual issues in Iranian intellectual circles is the decline of the Catholic Church's influence in Europe, particularly because both reformers and conservatives are interested in avoiding the same fate in Iran. *Id.* Soroush uses the Catholic Church example to illustrate his point that grasping power too tightly and too directly will lead to a decline in religion's influence, rather than it being preserved. *Id.* Soroush argues that the clerics draw the wrong lesson in seeing the Church's decline in political influence as being connected with its allowing greater liberty to external political forces. *Id.* Quite to the contrary, Soroush asserts that the Catholic Church was dethroned because it endeavored to exercise governmental and legal control to prevent social, political, and intellectual change, rather than, embracing or at least tolerating change. *Id.* at 170. If it had allowed greater leeway, then Soroush contends the laity's reaction to the Church would not have been so negative. *Id.* Soroush argues that only through these clerical elites abandoning the throne to return to being active participants in constant process and development of religious knowledge can the role of religion be preserved. *Id.* Only through this medium can Iran avoid what even the reformers perceive as the negative experience of the West. *Id.*; see also ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 294-301 (George Lawrence trans., 1969). On the collapsing influence of religion in Europe, de Tocqueville stated:

Therefore with us there must be some accidental and particular cause preventing the human spirit from following its inclination and driving it beyond those limits within which it should naturally remain.

I am profoundly convinced that this accidental and particular cause is the close union of politics and religion.

Unbelievers in Europe attack Christians more as political than as religious enemies; they hate the faith as the opinion of a party much more than as a mistaken belief, and they reject the clergy less because they are the representatives of God than because they are friends of authority.

Alexis De Tocqueville, a writer cited by President Khatami when addressing the similar hopes of the people of Iran and the United States,²⁵¹ explained the problems of the relationship between religion and the state by making essentially the same point as Soroush:

There have been religions intimately linked to earthly governments, dominating men's souls both by terror and faith; but when a religion makes such an alliance, I am not afraid to say that it makes the same mistake as any man might; it sacrifices the future for the present, and by gaining a power to which it has no claim, it risks the legitimate authority.²⁵²

Consequently, Soroush calls for a divide between the clerical

European Christianity has allowed itself to be intimately united with the powers of this world. Now that these powers are falling, it as if it were buried under their ruins.

DE TOCQUEVILLE, *supra*, at 300-01. Alternatively, addressing the profound influence of religion in the early American Republic, de Tocqueville stated rather concisely: "[A]ll thought that the main reason for the quiet sway of religion was the complete separation of church and state." *Id.* at 295.

251. BRUMBERG, *supra* note 54, at 195-204, 234.

Recalling Alexis de Tocqueville's *Democracy in America*, Khatami noted that the French statesman had attributed the admirable nature of American democracy to the "fact that liberty found religion as a cradle for its growth, and religion found protection for liberty as its divine calling." This unique relationship, he argued, was precisely what made America so appealing to Iranians. [Khatami stated:] "We feel that that what we seek is what the founders of American civilization were also pursuing four centuries ago."

Id. at 234. Both President Khatami and Soroush have adamantly asserted that there is a need for improved relations between Iran and "the West" (in quotes, because both these individuals attack the notion that the West is a monolithic entity wholly distinct or separate from the Islamic world, which they argue is not a monolith in itself either). Khatami has called for a dialogue of civilizations and the opening of Iran to the West, but insists on a cultural strategy that will prevent the emergence of being "Weststruck" or overrun by the cultural onslaught of the Western world. Vakili, *supra* note 210, at 171-73. Soroush indicates that a profound need exists for improved relations with the West. Vakili, *supra* note 210, at 171-72. Soroush

argues that selective borrowing from Western culture can benefit Iranian culture, provided that this borrowing is the result of free choice. [He contends that] [t]he only way for Iranian culture to grow is for it open itself up to other cultures, to interact critically and freely with developments from outside or Iran. [He states that] [e]xcessive nationalism or excessive religious puritanism threatens the rational climate necessary for cultural interaction and growth.

Vakili, *supra* note 210, at 172.

252. DE TOCQUEVILLE, *supra* note 250, at 297; *see also* Vakili, *supra* note 210, at 150-76. The legitimate authority of religion according to both de Tocqueville and Soroush is to guide and sway the individual hearts and minds of the people, rather than through the exercise of power directly or through close alliance with governmental entities. *See* Vakili, *supra* note 210; *see also* DE TOCQUEVILLE, *supra* note 200.

establishment and the exercise of temporal power.²⁵³ He relies upon a theory of religious consciousness that provides for religious elites persuading the people; the people will, in turn, hold their representatives accountable for implementing the religiously-informed measures preferred by the public.²⁵⁴

Conspicuously absent from this discussion of the reformist movement and its philosophy is a long series of important legislative initiatives that have been successfully implemented. The simple reason is that this movement lacks effective legislative, judicial, or executive power.²⁵⁵ The Constitution of Iran created democratic positions, such as an elected parliament and president, within a system that essentially grants real power to a small clerical elite who compose the Council of Guardians, and who are under the reign of a Supreme Leader, the *faqih*.²⁵⁶ Nevertheless, the public discourse and protest from the reformers—stretching from students on college campuses to elected politicians speaking in the *Majles* (Parliament)—is creating enormous pressures on the system.²⁵⁷ This pressure is the reason that clerical elites, who underestimated Khatami in the 1997 presidential campaign, are now moving to counter and suppress the reformist movement.²⁵⁸

This struggle is not over a particular policy or legislative initiative; rather, it is a fight over the nature of law itself. Is law the absolute and transcendent word of God in the form of religious text interpreted by clerical elites who perform a Platonistic search for truth? Or, is law created by the consent and consensus of the governed, who are inspired but not controlled by religious teachings?²⁵⁹ The clerical elites refuse to surrender the ideological state to the reformers' religious society. An effort is, therefore, underway to suppress the reform movement.

5. Clerical Backlash

The clerical backlash following the landslide election of President Khatami²⁶⁰ fits within the broader concerns of the religious clerics,

253. Vakili, *supra* note 210, at 169. Soroush calls for the clerical establishment to withdraw from political and financial control, fearing that this could be used as an axis for improper influence from religious leaders. *Id.* at 168-69.

254. *Id.*

255. Milani, *supra* note 9, at 94-95.

256. *See generally* BRUMBERG, *supra* note 54, at 185-229.

257. *See id.*

258. *Id.*

259. *See generally* Vakili, *supra* note 210, at 153-76.

260. Shevlin, *supra* note 31, at 379-80 (noting that Khatami received 20.5 million votes out of the 29.1 million votes cast, performed well electorally in both the more urban centers and the rural areas, and enjoyed particularly strong support among those younger than the age of 25).

who "have come to fear the position of the clergy in government and even for the fundamental principle of the Islamic Republic. . . ."261 Ayatollah Mohammad Reza Mahdavi-Kani, speaking for the conservative clerics, warned against any attempt to diminish the power of the *faqih*, by offering the following critique: "Beware! . . . When they dare to . . . say that the legitimacy . . . of the guardianship [of the *faqih*] . . . is based on popular demand, then nothing will be left of your guardianship. . . . It is foolish not to prevent these deviations in the name of freedom."262 This backlash has involved tightening controls on freedom of speech even among the elite religious academics, who have traditionally received more freedom from the government than the general public to express their views in scholarly publications or within informal discourse.²⁶³ Supreme Leader Khamenei, wielding anti-Western sentiment and the institutional resources of the office of the *faqih* as powerful weapons, called upon allies in the cabinet, the *Majles*, and the press in order to force reformers to defend themselves against accusations of being Western liberals hiding in Islamic guise.²⁶⁴ For example, in response to Ayatollah Montezari's criticism of the *faqih* as too powerful, Montezari was charged with treason and labeled as criticizing Islam itself.²⁶⁵ Also, the leadership council has used politically-motivated prosecutions of Khatami allies, including that of Tehran mayor Gholamhossein Karabaschi who was tried for corruption and mismanagement.²⁶⁶ Following the 2000 elections for the *Majles*, the Iranian Parliament in which the reformists performed exceedingly well, an attempt was made to assassinate the chief of staff of President Khatami, Sa'id Hajjarian.²⁶⁷ Indeed, not all assassination attempts have been unsuccessful: several prominent dissident figures in the reform movement have been killed by agents linked to the government's Ministry of Information, which is its intelligence agency.²⁶⁸ These murders are indicative of the fraying of the ties that bind the clerical elites and the weakening of the control of *faqih*. Supreme Leader Khamenei and many other leading religious clerics expressed publicly and privately their staunch opposition to such action, yet they were unable to prevent forces within the government from conducting these assassinations.²⁶⁹

261. *Id.* at 381 (citing Stephan Kinzer, *Voice for Change Makes Iran Vote a Real Race*, N.Y. TIMES, May 23, 1997, at A10).

262. BRUMBERG, *supra* note 54, at 2.

263. Shevlin, *supra* note 31, at 381.

264. BRUMBERG, *supra* note 54, at 2.

265. Shevlin, *supra* note 31, at 381.

266. *Id.* at 381-82.

267. BRUMBERG, *supra* note 54, at 251.

268. *Id.* at 241-42.

269. *Id.*

Freedom of the press has been even further restricted. For example, the *Jameyah*, an important newspaper that is sympathetic to the reformist movement and critical of the conservative *ulama* (religious clerics), was forced to stop publication.²⁷⁰ The clerical elites determined that *Jameyah* was printing in violation of the constitutional provisions relating to the role of the press in the Islamic Republic of Iran: the "media . . . must serve the diffusion of Islamic culture in order to aid the further development of the Islamic Revolution. To this end, there is benefit in the healthy encounter of differing viewpoints, but the media must strictly refrain from the diffusion and propaganda of destructive and anti-Islamic qualities."²⁷¹ Seventeen reformist papers have been shut down since the *Majles* elections in February 2000.²⁷²

Furthermore, the Council of Guardians successfully utilized its impeachment powers to remove Minister Abdullah Nouri because he allowed student organizations to conduct extensive public demonstrations that were critical of decisions made by the *faqih* and Council of Guardians.²⁷³ Additionally, when the reformist candidates performed well in the February 2000 elections, the Council of Guardians declared the elections fraudulent and ordered new elections.²⁷⁴ In a move that shocked conservatives in the clerical establishment, Khamanei, the *faqih*, intervened to prevent the Council of Guardians from invalidating the results of the second election, declaring the results official and ordering that the *Majles* be seated with the reformist members included as representatives.²⁷⁵ While the *Majles* has little actual power, this was seen as a considerable symbolic victory for Khatami and the reformists.²⁷⁶ Nevertheless, Adolkarim Soroush has been "banned from teaching, writing, traveling, and public speaking, and at any given moment one or more of these restrictions may be in place."²⁷⁷ Certainly, the Council of Guardians and the *faqih* have demonstrated their willingness to exercise power to curtail the reformist movement, but

The murders of dissident intellectuals . . . amply demonstrated that Khamanei's efforts to pacify conservative clerics without encouraging regime hard-liners were unsuccessful. Indeed, the assassinations not only showed that the *faqih* had failed to control a key part of the state's coercive apparatus, but also suggested that Khatami could not shield his allies from the worst forms of state violence.

Id.

- 270. Shevlin, *supra* note 31, at 382.
- 271. Algar, *supra* note 54, at 24.
- 272. BRUMBERG, *supra* note 54, at 251.
- 273. Shevlin, *supra* note 31, at 382.
- 274. BRUMBERG, *supra* note 54, at 251.
- 275. *Id.*
- 276. *Id.*
- 277. Vakili, *supra* note 210, at 153.

as demonstrated by Khamenei's decision to seat the *Majles*, despite or perhaps because 211 of its 290 seats are now held by reformists,²⁷⁸ there may now be emerging limits on the use of this power.

III. CONCLUSION

The Islamic Republic of Iran still endures more than two decades after the Islamist revolution that ended the Pahlavi dynasty and installed in power the religious clerical elites, who were embodied both to the West and to the Iranian people in the person of the Ayatollah Khomeini. The Islamist movement in most nations in the Middle East and the broader Muslim world is a movement that exists outside of the corridors of power. It focuses on increasing the opposition to the existing regimes and policies through means ranging from political protest, to political pressure directed at influencing royal families and presidents, to acts and threats of violence against civilians and the state. In Iran, however, the nation has been captured by the dissenters, or as Professor Sayyid has argued, the West's existential other has triumphed.²⁷⁹ With the increased attention focused on the Muslim world since September 11, 2001, reporters, columnists, analysts, and others have indicated that dissatisfaction exists on the "Islamic street" with their rulers.²⁸⁰ This Note addressed the question of what this "Islamic street" or Islamists, which is frequently what is meant by this term, want from their government in terms of internal legal reform. The answer unfortunately is that exceedingly complex and often contradictory goals are being sought by the Islamist movement. Nevertheless, the Iranian Revolution and its aftermath provide an important glimpse as it struggles to create an ideal Islamic State.

With the Shah deposed and the old regime washed away, the Islamic Republic enshrined in law an understanding of this ideal state using the Constitution of the Islamic Republic as a blueprint drawn from the rubric of sacred texts. The rejection of Western society that is embodied in this Islamic State is nowhere more explicit

278. *Id.*

279. See SAYYID, *supra* note 4, at 1-5, 89 (noting that "[i]t is only with Khomeini that Islamism makes the transition from an opposition and marginalized political project to a counter-hegemonic movement").

280. Thomas L. Friedman, *Where Freedom Reigns*, N.Y. TIMES, Aug. 14, 2002, at A23; Joshua Muravchik, *When Tyrants Rule, Terrorist Will Rise*, AUSTRALIAN, Dec. 26, 2001, at 9; Dr. Larry Diamond, *Winning the New Cold War on Terrorism: The Democratic-Governance Imperative*, Institute for Global Democracy, March, 2002, at http://www.globaldem.org/default.cfm?page=policy_paper1; *The Poor Arab Street*, ECONOMIST AGENDA, July 3, 2002, at <http://members.optushome.com.au/jimball/Arabstreet.htm>.

than in two central areas of divergence between the West and Iran: the relationship between religion and the state, and gender segregation in the public sphere. As argued by Khomeini, in an ideal Islamic State, and now in the Islamic Republic of Iran, there is no separation of religion from the state.²⁸¹ The state exists only to assist the fulfillment of God's will.²⁸² This could easily be dismissed as nothing more than the classical justification of autocratic rule; however, the democratic reform movement in Iran casts this proposition in an interesting light by not disagreeing with conservatives on the goal, but by disagreeing with the means employed by the clerical elites.²⁸³

One of the most important themes of the twentieth century legal change in the United States and the broader Western world is the gradual elimination of varying types of societal segregation including religion, race, and gender—particularly in the public sphere. Iran, however, has fundamentally rejected this concept of desegregation, or the elimination of societal barriers with gender segregation being the most obvious manifestation of this dissent. Although under the Islamist view, men and women are theoretically equal before God, it was, nevertheless, incumbent according to Islamist theory for the State to establish a legal framework that recognized the differences between men and women. From a Western perspective, this objective of facilitating the different but equal natures of men and women appears to result in little more than discrimination against women. This discrimination includes the exclusion of women from studying particular subjects in higher education, requiring the wearing of the *hejab* by force of law, stripping women of custodial rights, making divorce much easier for a man to obtain without requiring the oversight of the court system, and allowing a return to relatively unconstrained practices of legalized polygamy and *sigheh* marriages.²⁸⁴ Nevertheless, this concept of gender segregation attaches strongly to Islamist notions of natural law and the foundational requirements necessary for the preserving of Islamic civilization in a world dominated by Western, anti-Islamic cultural symbols and movements.²⁸⁵

281. Shevlin, *supra* note 31, at 365 (citing HOMA OMID, ISLAM AND THE POST-REVOLUTIONARY STATE OF IRAN 62 (1994), that notes Khomeini's view that "there should be no separation between religion and government in an Islamic state").

282. See IRAN CONST. art. 2.

283. See Vakili, *supra* note 210, at 150-76.

284. See generally PAIDAR, *supra* note 82.

285. See Darrow, *supra* note 75, at 310, 311-12, 314, 316 (indicating that Ali Sharati's philosophy advanced the concept that women "can be an actor in a civil society" and that in "both the family and civil society [women] can be a crucial participant in the revolutionary struggle," but that because of a perception of women's "vulnerability to empty fads in a consumerist society," there is "a need to construct

The West and the Islamic world are two worlds separated by the course of history and kept apart by differences in language, the arts, religion, traditions, and values. When Khomeini and his supporters looked at the Western world, they saw only an imperialist interloper that was endeavoring to undermine their society and civilization.²⁸⁶ When the West looked at Khomeini, they saw a radical cleric, who taught hate and endeavored to lead his people down a path toward a repressive life.²⁸⁷ Although the differences between the West and the Islamic world are significant in many areas, including the connection between religion and the state and the role of women, it is, however, in the understanding of what law is that the two are most fundamentally divided. Drawing upon the Biblical and Quranic traditions, it is as if the children of Issac and Ismael, the sons of Abraham, learned different lessons from history about who and how to trust. The West's secular faith, spurred by economic growth, social development, and fears of totalitarianism, proclaims that the people are to be trusted and with them sovereignty to reside. From this sovereignty, the people derive the power to make law. The Islamist movement watched the erosion of an empire; a civilization in decline was conquered, plundered, and reduced by imperialists.²⁸⁸ Societal changes did not reflect their values and threatened their way of life.²⁸⁹ They pointed to corruption within, as well as the enemy abroad, as the weakening agents.²⁹⁰ The answer for many Islamists was not to trust the people, for the people are weak and can easily be lead astray especially when temptation abounds.²⁹¹ They instead trusted the clerical elites to serve as paternalistic guardians to protect and defend the State and its people.²⁹² They argued that the

special protections for and walls around [women]," which is the concept that provided the basis for Islamist gender segregation model of society).

286. BRUMBERG, *supra* note 54, at 77-78; *see also* ESPOSITO, *supra* note 155, at 18.

287. *See* ESPOSITO, *supra* note 155, at 18.

By contrast, the West stood incredulous before this challenge to the Shah's "enlightened" development of his seemingly backward nation, and the resurrection of an anachronistic, irrational medieval force that threatened to hurtle modern Iran back to the Middle Ages. Nothing symbolized this belief more than black-robed, bearded mullahs and the dour countenance of their leader, the Ayatollah Khomeini, who dominated the media, reinforcing in Western minds the irrational nature of the entire movement.

Id.

288. *See id.* at 47-49.

289. *See id.*

290. *See id.* at 101-09; BRUMBERG, *supra* note 54, at 77-78.

291. *See* Vakili, *supra* note 210, at 161-68.

292. Shevlin, *supra* note 31, at 365 (standing as the centerpiece of Khomeini's vision of an Islamic State is the special role of religious leaders, Khomeini's Guardians of the Republic, in directing, guiding, and preserving the state).

West provides a model of the loss of religion when democracy emerges.²⁹³ There is, however, resistance to this notion among reformers, who argue that the West lost its faith not because of the absence of religious control, but because of the excess thereof.²⁹⁴ These reformers search not to change the Islamist goal of religious growth and exploration, but to save it.

Bernard Bailyn writes that John Adams was shocked by Plato's *Republic* to the extent that he concluded the text had to be intended as satire.²⁹⁵ When Khomeini, a man well versed in Western philosophy, considered the concepts of the philosopher king and guardians of city, he found inspiration to create the institutions that he believed were necessary to create a virtuous, good, and just society. Philosophical disagreement can and does exist as to whether the state should be directed towards protecting rights or enforcing responsibilities, between allowing freedom or creating virtue. To continue with the Platonistic metaphor, the danger in the Islamic Republic of Iran and to peace in the broader world is that the *Faqih*, who comes as the philosopher king, may well be little more than the tyrant. Khatami, the political leader, and Soroush, the philosophical pen of the reform movement, offer an alternative path to that presented by Khomeini, though they would argue they are merely reinterpreting him. They insist that a corrupt people cannot be cured by even the greatest philosopher king, or protected by the wisest guardians, and that a virtuous people has no need for either the king or the protectors.²⁹⁶

Soroush and de Tocqueville have argued that religion that remains separate from the state is far more powerful than religion that becomes a part of the state because it can guide and inspire—a more potent and legitimate influence than any lever of power controlled by the state.²⁹⁷ The emergence of this insight within the Islamist movement in Iran provides cause for hope. This insight provides an avenue for the expansion of the seed of democracy that was planted in the Iranian constitution as its struggles to grow into something more than what it is and what it has been for the past two decades. De Tocqueville and Soroush warn, however, that once religion has become ensconced as part of the State, it could be

293. Vakili, *supra* note 210, at 169.

294. *Id.* at 169-70.

295. BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 24-25 (1992).

296. *See* Vakili, *supra* note 210, at 150-76.

297. DE TOCQUEVILLE, *supra* note 250, at 297; *see also* Vakili, *supra* note 210, at 150-76. The legitimate authority of religion according to both de Tocqueville and Soroush is to guide and sway the individual hearts and minds of the people, rather than through the exercise of power directly or through close alliance with governmental entities. DE TOCQUEVILLE, *supra* note 250, at 297; *see also* Vakili, *supra* note 210, at 150-76.

corrupted and turned toward the aim of preserving power, rather than the inspiration of thought, faith, belief, and action.²⁹⁸ Unlike the Solidarity movement in Poland where the Catholic Church helped stand against the Communist State, the barriers confronted by the reformers in Iran include the clerical elites, who seem to have no desire to surrender their control. Nevertheless, from the election of Khatami against the wishes of Khamanei, to the written words of dissent in women's journals, to student protests, and the ever increasing numbers of voices in *Majles* standing to voice dissent, a rising tide is emerging behind the simple premise that people have a voice that must be heard. The reformists do not deny God, or religion, or faith, or even the wisdom of the clerics that guard the State. What they do deny is that the human apprehension of law can be definite and absolute beyond change or revision.²⁹⁹

The reformers argue that the development of the nation, and of Islam itself, is dependent on expelling the notion that the clerics can find some definitive version of God's law, as if it were merely waiting to be discovered through the interpretations of Government officials.³⁰⁰ They argue that this notion must be replaced with a concept that the people inspired by religion should make the law.³⁰¹ Whether the reformers will succeed and democracy will flourish in the Islamic Republic is a question that can only be answered by the course of history.

The next few chapters in the story of Iran will, however, answer critical questions as to the course of Muslim world and its relations with the West. Two of the most important questions are whether democracy can survive in this soil, and whether future generations in the Islamic world and the West will experience Huntington's "Clash of Civilizations" or Khatami's "Dialogue of Civilizations." Huntington argues that there are fundamental differences along ethnic and religious lines between the West and the Islamic world that are leading to conflict.³⁰² Khatami recognizes that real distinctions exist, but believes that human experience embraces enough commonality to allow for dialogue that can offer a shared peace, in place of bitter

298. DE TOCQUEVILLE, *supra* note 250, at 297 (stating that when religion becomes entwined with the State, "it is sometimes constrained to defend allies who are such from interest rather than love"); Vakili, *supra* note 210, at 157 (stating that "an ideological government must both develop and maintain an official ideological platform that at once legitimizes the government and acts as an unifying and mobilizing force. To accomplish this, the government requires an official class of government-allied ideologues, whose sole task is the formation and defense of the ruling ideology.").

299. Vakili, *supra* note 210, at 153.

300. *Id.* at 153-55.

301. *See id.* at 158-65.

302. *See* SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1998).

warfare.³⁰³ An abiding faith in the nature of humanity inspires much of the thought and philosophy of the reformist movement; with the story still unwritten, there is still cause for hope.

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303. BRUMBERG, *supra* note 54, at 195-204, 234.

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